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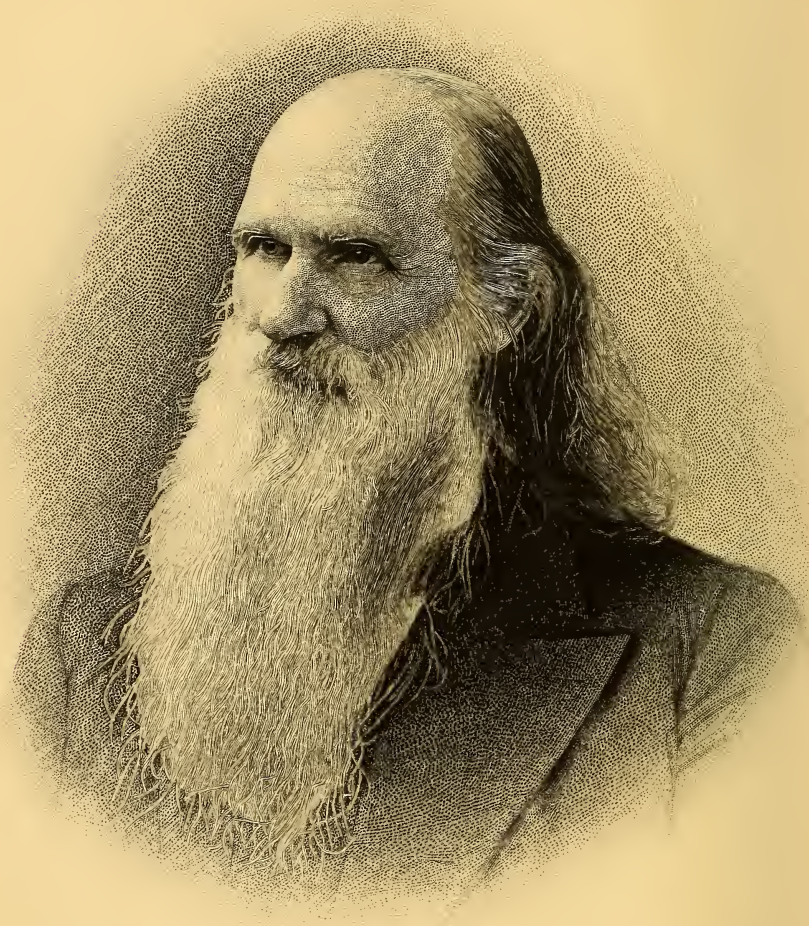

Truly Yours
L. E. Bucklin

A MEMORIAL

OF

LOGAN EDWIN BLECKLEY

BY THE

GEORGIA BAR ASSOCIATION

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This Tribute

of the Georgia Bar Association to the memory of Chief Justice Bleckley, is published in pursuance of the Resolution adopted, May 28th, 1908, at its Twenty-fifth session, whereby the undersigned were appointed a committee to "publish in a bound volume, the Memorial then read; that contained in the Supreme Court Report, and, such writings from the pen of Judge Bleckley and other matter as in the judgment of the committee, portray his remarkable characteristics, personal, judicial and professional."

J. R. Lamar, Chairman.
Joel Branham,
H. H. Perry,
Albert H. Russell,
Committee.

November, 1908.

SKETCH OF
CHIEF JUSTICE BLECKLEY,

prepared by special committee and read by J. R. Lamar, of Augusta, Georgia, at the twenty-fifth annual meeting of the Georgia Bar Association, May 30th, 1908.

Reprinted from the Annual Report.

1909
THE J. W. BURKE COMPANY
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LOGAN EDWIN BLECKLEY.

Jurist, philosopher, mathematician, poet. A colossal and unique figure. A born judge, whose first public utterance was a plea for the creation of the court of which he was to be an illustrious chief justice.

The constitutional amendment providing for a Supreme Court had been duly ratified in 1836, but the game of politics, with the determined hostility of those who opposed its organization, had prevailed, and, for several sessions the General Assembly met and adjourned without passing the act necessary to make the amendment effective. Living in the remote mountains of Rabun was a frail and sickly lad of thirteen — older than his years — with the judicial instinct so strongly developed that he recognized the subtle principle which made the failure to act a positive wrong, and the pen which was destined to illustrate the pages of Georgia's judicial history, began its work with an article in the newspaper of an adjoining county, in which the boy joined issue with the General Assembly, and, passing all questions of expediency, maintained the proposition that the authority to create was a command to organize, and that the Legislature, in its non-action, was guilty of a positive violation of the Constitution of the State.

This was not precocity, but maturity of thought, only equaled by the freshness of mind which characterized Judge Bleckley as a patriarch in years. Typical old age lives in the past, but this old man, with youthful heart and brain, keenly alive to the present, hopeful of the future, insisted (7 Ga. Bar Rep. 20) that he "intended always to be one of the young men;" acknowledged that he "depended for progress upon posterity," and while conceding that "conservatism was all well enough in its place, awaited hopefully the arrival of posterity to make the needed changes in the administration of the law."

Of Judge Bleckley's ancestry, we know that his father was

English and Irish, and his mother was of German descent. His great-grandfather, George Lutes, a native of Bavaria or Wertemberg, came first to Pennsylvania, and afterwards settled in North Carolina; thence he moved to Virginia where his paternal grandfather was born, and later moved to Georgia. His father, James Bleckley, married Catherine Lutes in 1823 and lived in Rabun County, Georgia, where, on July 3, 1827, Logan Edwin Bleckley was born.

The influence of his German ancestry manifested itself in the subtlety and acuteness of his mind, the love of mathematics and metaphysics, and his unsurpassed facility in making clear the abstruse and abstract. The character of his father, however, more profoundly affected the son, who cherished for him the tenderest affection, and of whom (12 Ga. Bar Rep. 114) he wrote: "He had great solidity of personal character, and its basis was Truth. In word and in deed, he was a *true* man. Such was his estimation of veracity that he taught his children, as a standing precept, that theft, criminal and degrading as it is, is less abhorent than deliberate falsehood. The reason he gave was that society has more defenses against the violator of property than it has against a violator of the Truth, and that to reform the tongue is a more hopeless task than to restrain the hand."

We find here the key-note of Judge Bleckley's character. In all his utterances, public and private, Truth is adored, deified. This abiding sentiment found a notable expression in a remarkable address on "Truth at the Bar," (3 Ga. Bar Rep., 107) which he begins by saying "Law is the scripture of Justice, the Gospel of Right, and Truth is the Minister at its Altars. Error is a pretender to Holy Orders,—a wolf in sheep's clothing, always striving to usurp the sacred office, or to share in the exercise of its functions. To exclude Error from the sanctuary, and to admit and keep Truth within, are objects of sedulous endeavor in every system of enlightened jurisprudence."

James Bleckley was a farmer, and a man of great influence in his community — successively sheriff, clerk, ordinary and judge of the County Court. The son's mental attainments

would have fitted him for either a literary or a scientific calling, but the legal environments of the head of the mountain home naturally impelled him towards the bar, and, at an age when most of his companions were struggling with the multiplication table, this boy of eleven had begun the study of law. (22 Ga. Bar Rep., 143). It is doubtful if there is to be found in the biographies of lawyers or judges a parallel case, where one so young, undertook, of his own accord, a study so uninteresting to the youthful mind. Books were few. It was before the days of the Code, or Cobb's Digest. But it is of the essence of genius not to be deterred by difficulties. He says (4 Greenbag, p. 50,—1892) he "had contracted a relish for the Law, and, in his father's office, became familiar with legal documents and forms of procedure. The Statutes, strange to say, were pleasant reading, and, at intervals," he "read them with assiduity." By the time he was sixteen, he had what he calls a "boy's acquaintance" with many legal topics. He was wholly self-taught, without even the Primer of the Law from which to get a clue to the maze. He constantly attended courts, and J. W. H. Underwood, Esq., having expressed the opinion that young Logan would make a lawyer, loaned him Blackstone's Commentaries. He never forgot this act of kindness, and many years afterwards, on the occasion of the memorial exercises in the Supreme Court in honor of Judge Underwood, the Chief Justice said: "On that day I received from him in the town of Clarkesville the two volumes which I now hold in my hand. I put them in my saddlebags and rode twenty-five miles to Clayton, and that evening, as soon as I reached home, I opened the first volume and read the first line of Blackstone. In April, 1846, less than two years after he sent me the books, he was one of the three legal gentlemen who certified to the usual legal fiction that I was well qualified for admission to the bar. I have here his certificate to that effect," (producing it and the two volumes). Those who know his absolute honesty, not only of conduct but of mind, his abhorrence of debt, or obligation in any form, will not be surprised that, in the same memorial, he said: "I want to observe, as I have produced the books, that, wishing

to keep them, he kindly allowed me, long afterwards, to purchase and pay for them, and they thus became my property." (83 Ga., 818).

Soon after his admission to the bar, he witnessed the imprisonment of a woman for debt. This so profoundly moved him that he prepared a bill to exempt women from arrest for debt, secured its introduction into the General Assembly, and its enactment into law — thus making him the Georgia pioneer in the movement which gradually expanded, until it was declared by the Constitution that there should be no imprisonment for debt, and this ancient relic was entirely blotted from the laws of Georgia. (16 Ga. Bar Rep. 8).

The young lawyer's success was not immediate. He says: (Greenbag, 4th Vol., p. 50) "Though for the two following years I had a monopoly of the minor practice, and a fraction of that which was of some importance, the litigation of one sparsely settled mountain county which fell to my share was too inconsiderable to break the continuity of my studies, or rather my legal meditations. . . . My professional income for these two years, not counting insolvent fees, amounted to between $35.00 and $50.00 per annum. Having no means with which to establish myself elsewhere and wait for a clientage, I determined to suspend practice and engage in a more lucrative department of labor until I could accumulate a small capital. I sought and obtained employment as bookkeeper in the State Railroad office in Atlanta, and remained for three years — my compensation ranging from $40.00 to $66.00 per month. In the fourth year, I was transferred to Milledgeville, then the capital, being appointed one of the Governor's Secretaries, with a salary of $1,200.00. A new incumbent of the executive's chair was inaugurated in 1851, and both my health and my politics needing repairs, I returned to private life and opened an office in Atlanta. Clients gradually ventured within my chambers, and I soon had a moderate prosperity, due chiefly to acquaintance made in railroad circles during my three years' service as a railroad clerk."

These extra-professional engagements ultimately proved of great value. He then laid the foundations for that astonishingly broad and accurate knowledge as to business and corporate methods which so often surprised those who knew him only as the writer of opinions so brilliant as to suggest that his talents lay in a literary, rather than in a professional field.

Returning from Milledgeville to Atlanta, he continued in the practice of the law until 1856, when, although he was a Democrat, and that party was in the minority, he was elected Solicitor-General of the Coweta Circuit over his Whig competitors. He has left on record a most amusing account of his success, notwithstanding his inability to electioneer. He says that he was anxious to submit to election, but not willing to struggle for it, and one of the Whig candidates having been withdrawn, their whole vote came to his support. "I had no cause to anticipate this timely rally of my political adversaries to my assistance, and it surprised me almost as much as it gratified me, and it did gratify me profoundly, for when one is a candidate, it is a pleasant thing to be elected, even by the votes of the opposition." He served out his term of four years as Solicitor, and, in 1864, was appointed Reporter by the Judges of the Supreme Court. Owing to the war, and to the fact that, in a large measure, the courts were practically closed, two small volumes contain the report of the work of the Supreme Court for four full years. While the volume of his work was not great, his characteristic individuality expressed itself, and those who are familiar with his style will see it manifested in the Statement of Facts in 34 and 35 Georgia Reports, as, for example, in Jordan vs. Faircloth, 34 Ga., 47. He was particularly qualified for such work, for while he was a man of gigantic intellect, he gave the closest attention to details. He was methodical to a remarkable degree. He kept note-books in which he entered the substance of what he had once learned, the result of which was that, when he had once read a book or a case, he not only had it in his mind, but he had ready means of access to the source of his knowledge. Thus, by making thorough work of it once, he avoided the labor of having to do

it again. He had no desire to perform the labors of Sisyphus. He was the first to prepare a Table of the Georgia cases, showing where they had been subsequently cited, and this he printed in the 35th Georgia and gave the results of his private study to the profession.

He resigned the office of Reporter in 1867, and again returned to the practice in Atlanta, where he remained until 1875, when he was offered the appointment of Judge of the Supreme Court. He at first declined that appointment, but later accepted it and entered upon the work which made him famous. On account of overwork, he resigned in 1880. In 1887 he was appointed Chief Justice, and held that office until 1894, when he again resigned on account of overwork, but ever afterwards was recognized by the people, by the bar, by his successors on the bench, as Justice Emeritus, and, even after his retirement, at the request of the Court, prepared the notable opinion in the Greene case, 97 Ga., 36.

This is a brief record of the professional occupation, the offices held, and the work done by Judge Bleckley. There is nothing extraordinary in such a record. During much of the time, he was not burdened with practice; but these years in which he said that he had so little to do as a practitioner, were not wasted, but were utilized in most extensive professional and general studies. Many years afterwards, in an address before the Bar Association, 17 Georgia Bar Reports, 201, he said that "Most of us make a great mistake in not giving proper attention to the philosophical elements of the law, and in not prosecuting through life that side of professional study and learning. We become absorbed too exclusively in the particular rules and practical details of the law, to the neglect of general principles—those broad principles which have their roots in natural and universal law. To be real lawyers, and not mere practitioners, we must give due attention to these and not limit our vision to mere municipal law."

This advice to others given in his last years, he had acted upon all through a long life. He had had a most limited training in a mountain school, and yet without other literary or profes-

sional advantages, he was, at the time of his death probably the most learned lawyer in the State, and, in many respects, among the most learned in the country; learned not only in modern and practical law, but learned in the blackletter of the law. He was wholly self-taught, and yet had thoroughly mastered the works which the old-time lawyers studied; had read and digested many old volumes, the very names of which the modern lawyer does not know. His peculiar metaphysical turn of mind enabled him to read with ease, and even pleasure, books like "Coke on Littleton," "Fearne on Contingent Remainders," and "Hargraves Readings on the Statute of Uses." But, thorough as was his knowledge in the law, ancient and modern, State and Federal; familiar as he was with the decisions of our own Court which he had mastered and indexed for his own private use, yet his reading in other departments was even greater than it was in that of the law. While he refers to himself as a religious "suspect," and while his two poems, "Faith" and "Fear," show him to have been what might be called a reverent Agnostic, he had read and thought on theological questions quite as much as he had on legal questions,—indeed, in one of his addresses before the Association, he says that he had thought more on the subject of religion than he had on that of the law. (22 Ga. Bar Rep., 143, 148).

In connection with his legal and theological reading, he had made a profound study of metaphysics. He had read and was familiar with Hobbes, Locke, Sir William Hamilton, Kant and German Metaphysicians. But, unlike many metaphysicians, there was nothing obscure in his style. His essays are distinguished by clearness. He discusses the abstract as though it were the concrete, and in language so simple that the reader is both interested in the topic and charmed with the style.

This clarity of expression may possibly be due to the fact that, along with his study of metaphysics, he took a genuine pleasure in the study of the higher mathematics, and, like many other great judges, turned to them from legal investigations for relaxation of mind, but this relaxation was not mere pastime; for, he had made mathematical investigations which he

had carefully preserved and which those able to judge pronounced to be original and valuable, but unfortunately the manuscript was lost in a fire several years before his death, and at a time when his health would not admit of the labor of rewriting what had been burned.

Judge Bleckley was not only a student of law, theology, metaphysics and mathematics, but he was a great reader of general literature, history, science, biography, travel, and, as illustrating the accuracy of his memory, and the thoroughness of his methods, one of the stories with which the bar was familiar, ten or fifteen years ago, recounted a conversation between Judge Bleckley and a gentleman recently returned from Europe in which they discussed the scenery as viewed from an inn on the side of one of the Alps, but disagreed as to the relative position of a glacier. After Judge Bleckley had convinced the returned traveller, the latter asked what year he went to Europe and was amazed to find that his exact knowledge of the position of the glacier had been wholly derived from reading books of travel, in which Judge Bleckley had kept before him a map, and, as he read the descriptions, he marked the line of his mental travels on the map, receiving and retaining a most vivid mental photograph of what he had described. He read as one seeing.

Along with his interest in these other subjects, Judge Bleckley was not only familiar with the works of the great poets, but he himself frequently courted the Muse. His poems, however, were all intellectual; they are wanting in passion and fervor and are confessedly poems of the head. They illustrate his extraordinary command of language, and some of them show a verbal skill and a mastery of rhyme, and of metre even the most irregular, that is really extraordinary. These poems were happily collected by Judge Akin and put in permanent form in a paper read before the Bar Association.

We all recall Judge Bleckley's intense objection to the irrelevant, and his frequent addresses as to the importance of the relevant. Ignoring, or disputing, that element in humor which is furnished by a sudden and striking relation between the ap-

parently unrelated, Judge Bleckley, strange to say, denied that there was any humor in any of his decisions, insisting that it was only the relevancy of what he said that was thought to be amusing. But whatever the source of his delicious and bubbling wit, Chancellor Hill said that it was "continually springing up in his driest decisions like a fountain leaping from sawdust." (4 Greenbag, 72). Albert H. Russell, Esq. (15 Ga. Bar Reports, 244-283) prepared a delightful paper entitled "Wit and Wisdom of Judge Bleckley," which, in pamphlet form, has been called for by lawyers throughout Canada and the United States, and the Georgia judge has thus furnished the bar of the nation many a clincher to an argument.

The foregoing estimate of Judge Bleckley's varied powers and attainments may sound like exaggeration to those who were strangers to his inner life and who judge only by the tangible evidence of public expression and printed volumes. It will be seen by those who knew him that there has been a studied repression, because of a realization that "one word of undeserved praise would be untrue to his character, and his memory." But enough has been said to outline faintly his remarkable powers — his amazing intellectual force. He was, indeed, a genius, many-sided, with the powers, originality and occasional eccentricities of a genius. But to her greatest favorites, Nature gives not genius alone, but yokes it with passion for work, and, from that union, come those products of the brain that endure.

Those decisions of Judge Bleckley which appear like crystals in clearness and so simple that a tyro may understand, were written,—not with ease and facility, but with travail and pain,—what he calls "pain of doubt, fatigue, despair." With a genius for law never excelled, he was yet the hardest worker, the most laborious student. Though he had conquered the physical frailties of youth, his incessant labors told on the great frame and again and again he broke down from overwork, although, on occasions, "he even hired help by the day's work at an expense of more than half of his *per diem.*" (4 Greenbag, 77). He literally burnt the midnight oil. He spared neither body

nor mind, writing, revising, rewriting, and his great opinions bear the mark of his painstaking labors. (22 Ga. Bar Rep. 138.)

Lord Campbell generally found material in his "Lives of the Chancellors" in what they had done and said in public life rather than what they did or said while on the Woolsack. But, in view of his constant complaint that most of his subjects were deficient in literary skill, with what pleasure he would have undertaken the life of a man like Judge Bleckley, whose opinions are the most quotable extant, and sparkle, not with occasional, but with continual sayings,—pithy, humorous, wise, profound,—couched in language so perfect that they charm both the layman and the lawyer. But Judge Bleckley's biography, even by Lord Campbell, would have to discuss the man and not his deeds. His life was almost entirely free from those incidents, or participation in remarkable events, which form the basis of most biographies. It is he himself that is interesting and not what he did. Even his work on the bench gets no adventitious assistance from the subject of his opinions. There were no exciting questions which were submitted to the court during his incumbency. No great constitutional nor political issues came before him for decision. The current of judicial labors ran almost without a ripple, and his reputation was made by the excellence of every-day work in deciding common, every-day legal issues. Even in this work, the simplicity of his style is calculated, at first blush, to cause an underestimate of his opinions. For, at last and above everything, Judge Bleckley's peculiar power was to make plain that which was confused and to make simple that which was difficult.

The great labor that he performed was in mastering the case; in unravelling the confusion of names, dates, and in winnowing out the real issue; that having been done, he eliminated the irrelevant and he then discussed the single issue that had been left.

His method was rarely disclosed, but he does give us an insight as to how this was done in a sentence in the Ellison case, where he said: "Having freed the Court from its own misconstruction of the Code, we are now ready for a new and true construction. And to find it, is one of those *difficult easy*

things which so frequently present themselves in the law. *When the right point of view is discovered, the problem is more than half solved."* (87 Georgia, 706). But whatever the method, the result is that most of his decisions appear to be so simple and the results so self-evident that one almost instinctively inquires as to how there ever could have been any question over so plain a matter, forgetting that the real work behind the scenes was in reducing the question to that obvious issue. In respect of his opinions, he cannot be better characterized than by language which he used of another (83 Ga., 825): "His mind was a crystal; it was as clear as a sunbeam. What he saw, he saw with a distinct vision and what he said, was said in clear, concise and elegant language." While he was essentially modern in his spirit, yet he uniformly sought the fountains and ancient ways of the law. There is, however, a noticeable lack of anything like pedantry in his opinions. There is no smell of the lamp. His constant effort was to seek what he somewhere calls the "justice of the justice" of the case; but never to the sacrifice of legal principles or of legal rights, and, for that reason, it was his habit always to trace back to one of the tried and received maxims of the law, even though he did not quote it.

The solidity of Lord Coke's learning and reasoning give value and permanence to his work, but his quaintness has attracted many a reader who would otherwise have passed by the dry volumes, and so with Judge Bleckley's decisions. The pithy remark, the flash of humor, the quaint turn of phrase, have added an attractiveness to their otherwise solid strength, and made his opinions known and read far and wide. But his reputation does not rest upon his brilliant sentences; they are but the flashes of his genius. His national reputation as a great judge rests upon the solidity of his learning, his profound knowledge of the law, and the value of his opinions contained in the Georgia Reports. Most of them are brief, all of them, he made to appear easy. Occasionally he did have before him a case which taxed even his own power of analysis and simplification, and then he girded up his loins for an elaborate and conspicuously great opinion. He himself regarded the opinion

in the Ellison case as his best work, and, next to that, he put Ewing vs. Shropshire, 80 Georgia, in which he uttered the last words over the remains of the Rule in Shelley's case. Kinnebrew vs. State, 80 Georgia, 241, is a model of severe logic. Alabama Railroad vs. Fulghum, 87 Ga., 263, is a conspicuous illustration of his power of condensation.

Judge Bleckley verified the French maxim that the style is the man. His clearness is only equaled by the openness of his nature. He had the simplicity and frankness of a child,—a frankness that prompted him to admit a fault as soon as it was committed and ever afterwards. He loved the friends of his youth, was full of sentiment, and cherished the very certificate that admitted him to the bar, and the two volumes he read as a youthful student. And yet, deep as was the hold of sentiment on his nature, he knew that courts are not the proper place for feeling and emotion. In asserting this important truth, he prepared his paper on "Emotional Justice." (9 Ga. Bar Rep., 54)—one of the saddest, profoundest and wisest things ever written on a subject which naturally developed into a discussion of mob law and its striking concomitant, appeals to the emotion of juries. In this paper, Judge Bleckley gave a wonderful instance of his marvelous power of analysis. Nothing can be more difficult than to prove an axiom, discuss a truism, or to lay bare the foundations of the bed-rock. This he did with sustained power, and both proved and enforced that which seemed beyond proof. He says: "The influence of the mob waxes, while that of the jury wanes. The body which decides between guilt and innocence ought to be the most influential, the most feared and respected of any in society. No organization in or out of the court house should be so terrible to evil-doers as a jury of twelve men. No mob, even if composed of first-class citizens, ought to compete with the jury for repute in inflicting punishment on offenders. The jury alone should be conspicuous in the exercise of this high function in behalf of the public. . . . I exhort and abjure all good citizens to cooperate with the executive and the judiciary in staying quickly that violent justice which is rife in our unhappy country. Children already born may live to see mobs mobbed; large mobs

may execute smaller ones; mobs of one race may rise up against mobs of another race; mobs of bad men may become more numerous and more terrible than mobs of good men."

No sketch of Judge Bleckley's life would be even passably correct which failed to call attention to his relations to the bar by whom he was loved and venerated. He was ever the honored guest of the Bar Association, and no meeting was complete without his presence. In response to urgent invitations, he prepared for it many papers of permanent interest and value. These, with his stenographically reported oral addresses, and the "Letter to Posterity" published in the "Greenbag," not only afford interesting biographical material, but will be of value to the future student of Georgia jurisprudence. That same student may find on the walls of the Supreme Court room in the State Capitol an excellent portrait of the Chief Justice, though he will not be able therefrom fully to appreciate the towering form, the powerful body, the immense brow, nor the deep-sunken eyes, indicative of the spirit of the poet, the mathematician and the jurist all struggling for preëminence. In personal appearance, he was like a prophet of old, but his nature was too kind and his heart too gentle to rebuke, with any bitterness, the sins and frailties of his generation. From eleven years of age to eighty, he devoted himself to the study of the law — the youngest student in the State, attorney, reporter, justice, chief justice, he lived the Nestor of Georgia's bench and bar. He died March 6, 1907, and on his tomb might truthfully be inscribed the epitaph over Macaulay, "His body lies buried here, but his name will live forever."

JNO. L. HOPKINS, *Chairman.*
J. R. LAMAR,
JOEL BRANHAM,
H. H. PERRY.

[The substance of the foregoing sketch was prepared for "Men of Mark in Georgia" by a member of the Committee. With the consent of the publisher, and at the request of the other members of the Committee, that sketch revised and somewhat amplified was made the basis of the foregoing report.]

PROCEEDINGS

HAD IN

THE SUPREME COURT OF GEORGIA

IN MEMORY OF

EX-CHIEF JUSTICE BLECKLEY.

Reprinted from 128th Georgia Reports.

IN MEMORIAM.

Supreme Court of Georgia, July 3, 1907.

Present all of the Justices.

The committee appointed to prepare a memorial commemorative of the life and character of Logan E. Bleckley, deceased, formerly Chief Justice of this Court, submitted its report through Judge John L. Hopkins, its chairman.

Addresses on behalf of the bar were made by Judge John S. Candler, Judge Joel Branham, and Mr. Z. D. Harrison, and papers were read from Mr. Frank H. Miller and Col. I. E. Shumate.

Response for the court was made by Associate Justice J. H. Lumpkin.

The court directed that a page of the minutes be set apart, dedicated to the memory of the deceased; that the report of the committee, copies of the addresses made, and response of Justice Lumpkin for the court be filed and published in the 128th volume of Georgia Reports; and that copies thereof be furnished to the family of Judge Bleckley.

At the conclusion of the reading of the response of the court the Chief Justice announced that, as a further mark of respect to the memory of the late Chief Justice Bleckley, the court would stand adjourned until nine o'clock of the next day.

MEMORIAL OF HONORABLE LOGAN E. BLECKLEY.

Report of Committee.

To the Honorable the Supreme Court of Georgia.

The Committee appointed to prepare and report a memorial commemorative of the life and character of Logan E. Bleckley, formerly Chief Justice of the Court, respectfully submit the following report:

Logan Edwin Bleckley, second son of James and Catherine Lutz Bleckley, was born near Clayton, Rabun County, Georgia, July 3, 1827. Both parents were natives of North Carolina. His father's blood was English and Irish combined; his mother's German. His father was a poor man. He was of strong intellect; was clerk of three courts: the Superior, Inferior and Ordinary, and was a sterling character. At eleven years of age Logan went into his father's office as an assistant. His relish for law came to him in that office, and at the age of seventeen he borrowed books and began the study. Before he was nineteen he was admitted to the bar. He had no instructor. He practiced in that county for two years, his income for the time being between thirty-five and fifty dollars *per annum*. In order to accumulate a fund that would enable him to locate elsewhere, he obtained employment as bookkeeper in the State Railroad Office, at Atlanta, at a salary of forty to sixty-six dollars per month. In the fourth year of that employment he was appointed secretary to the Governor, at a salary of twelve hundred dollars. On a change of administration he retired from that office, and in March, 1852, he opened a law office in Atlanta and resumed the practice. In 1853 he was elected solicitor-general for the Coweta circuit, the term being four years. He continued the practice until 1861. In that year he joined the Confederate army, but was discharged on account of extreme general debility. After his discharge he

served the Confederacy in legal business in Atlanta. In 1864 he was appointed Supreme Court Reporter. He reported the 34th and 35th volumes, and resigned in 1867. He resumed the practice and pursued it until 1875, when he was appointed Associate Justice of the Supreme Court. That office he held until the September term, 1879, when he resigned. In 1887 he was appointed Chief Justice of the Supreme Court, which office he held until he resigned in 1894. During the remainder of his life he lived in comparative retirement, doing occasional legal work for lawyers or others, who consulted him as an oracle of the law. He was married May 13th, 1857, at LaGrange, Georgia, to Miss Clara Caroline Haralson. Five children were born of that marriage. Mrs. Bleckley died March 9th, 1892. His second marriage was to Miss Chloe Herring. It occurred in New York City, August 2d, 1893. Five children were born of this marriage.

Judge Bleckley was something over six feet tall. He wore his hair to his shoulders, and his beard to his breast. He dressed inexpensively, and had his garments made to suit himself regardless of fashion. His commanding form and noble presence made him a noticeable figure. In all the rounds of his life, privately, publicly, everywhere, he was at all times distinctively Logan E. Bleckley. The purity of his life and the gentleness of his nature, were in his face. He died at Clarksville, Georgia, on Wednesday, March 6th, 1907. His body was brought to Atlanta and taken to the residence of his son-in-law, Hubert L. Culberson, Esq. On Thursday morning it was placed in the center of the Capitol rotunda. A guard of honor, composed of a committee appointed by the Atlanta Bar Association, kept vigil over the remains as they lay in state. At 3:15 o'clock the remains were carried to the Supreme Court room, where the funeral rites were held, conducted by Rev. J. W. Lee, pastor of Trinity Church. The ceremony being over, the body was taken to Oakland Cemetery and placed in the family lot. The entire proceeding was conducted with great simplicity. There was no display. When the death occurred the news was flashed over the State, and everywhere it was received with expressions of

profound sorrow. The Supreme, superior and city courts throughout the State adjourned. The State of Georgia went into mourning, closed its offices and put its flag at half-mast. The honorary escort was composed, perhaps, of a greater number of distinguished men than had ever before followed a Georgian to his grave. From every quarter of the State men of all classes came to pay respect to his memory. There was one thing that was most noticeable. It was the solemn silence that everywhere prevailed. Men felt—they did not talk. It was silence that was born of deep respect and love. Such respect and love as do not find expression in the blare of trumpet, or the roar of cannon. In the respect that was shown there was a depth and genuineness which can never be forgotten. The silence was a voiceless expression of the conviction that the State had never lost a better man.

In view of this unparalleled manifestation of esteem, we are impelled to inquire, what manner of man was he? What was there in his character, his life, which called forth this wonderful tribute to his memory? Whatever it was, it should be known, for certainly it was, and must continue to be, worthy of emulation.

We make no apology for departing from beaten paths in shaping this report.

The Chairman of this Committee makes this statement: "For more than forty years I was on terms of close friendship with Judge Bleckley. The relation was an intimate one. The interchange of thought between us was unreserved. During all those years I never heard him utter an ignoble or ungenerous sentiment. I never heard him express ill feeling toward any human being. I never heard him use a word which might not, with propriety, have been spoken in any presence." Each member of the committee gives testimony similar in character, with varying terms of acquaintance. Each member knew him well, and was on terms of friendship with him. We are confident that all who knew him would corroborate this testimony. He was certainly a gentleman of the loftiest type.

We do not believe that any man can say truthfully that Judge Bleckley ever looked upon him in unkindness. Animosity was

a stranger to him — that element was not in his character. In the year 1847, he being in his twentieth year, he was in the town of Clayton, on his way to Milledgeville to seek employment at the then approaching session of the legislature. In Clayton he saw a woman who was held a prisoner by the sheriff. Her offense was that she owed a debt which she had not paid because she could not. She was exposed to public gaze, and was about to pass into the debtor's prison. Some generous gentlemen paid the debt for her, and she was discharged and went her way. Young Bleckley had been licensed, the year before, to practice law. After reaching Milledgeville he prepared an act abolishing the imprisonment of women for debt. It was introduced and became a law. It was a great step in the ascent of a people's life. That act of his was deeply prophetic of the life he was to live, and did live. We are warranted in saying, that, from that day to the day of his death, there never was an hour when his great heart was not full of sympathy for his fellowman. If at that time the curtain had dropped upon his life, and no more had been known of him, still, as the person who took the initiative in abolishing the imprisonment of women for debt, his name should have been held in everlasting remembrance.

Where principle was involved he was uncompromising. He made no concession to error. There was no such thing in him as a conscious, voluntary compliance with wrong. In standing by what was right, he could rise to as grand a moral height as any man. His intellectual life was candid. His mind was an honest one, and it was fixed habit with him to present a fair mental attitude to everything. He thought for himself, and in doing that he never lost sight of the importance of dealing honestly with himself. He accepted no opinion merely because it was current. He was not in any respect the slave of conventional opinion or practice. He did not blindly follow anything or anybody. His dominant purpose was to follow the truth and do right, not by paroxysms, but always. His love of truth gave a sublime rhythm to his life.

He did not follow truth as he saw it reflected in what people said or did. His standard was a higher one; and if ever man was true to a high standard, he was. He lived to exalt life — not to debase it. To his conception of right and wrong he referred everything. Necessities, emergencies, had nothing to do with it. He was just and honest to the core, and whatever the matter was it had to stand or fall according to merit or demerit. Justice, the foundation of all law, he styled "the pontifical virtue." His sense of justice was not merely academic — intellectual, it was a governing motive, a controlling element of life, and with him it never stood aside for anything, not even self-interest. Prior to the year 1861, he collected seventy-five dollars for a client, who disappeared and the money was never called for. Forty years afterward, he directed in his will that that should be treated as a just debt and paid. The lapse of time had made a legal assertion of any claim impossible, but the lapse of time had nothing to do with his sense of justice. Mere materialism had no place in his life.

Proof of his merit, and of the public confidence that was reposed in him, may be found in the fact that he held office for nearly one-third of his lifetime, although he knew no more about the ways of an office seeker than did a little child. "Electioneering" was truly an occult science with him.

As a practitioner his cardinal rules of action were observed. He held to the principle that a right could not exist in a client to have him knowingly do anything wrong. His uprightness never was called in question.

As a counselor he was one of the safest. He went to the study of the law to find out what was true law, and not to get something to be used in support of the necessities of a case. His arguments were strong, logical, impressive, but he was not what is called a "popular orator." He did not have that element which sometimes, innocently enough, stirs the emotions, until juries are swept off their feet to the doing of injustice. He practiced on a plane where reason prevailed, and where there certainly was no purpose to drive it from its throne. The first

place at the Georgia bar was accorded to him, as a matter of right, by the profession.

Such a character as we have described could make but one kind of a judge, and Judge Bleckley was of that kind. In the judicial office to have been dull of intellect, shallow of learning, unjust, acrimonious, impatient or unkind, would have been contrary to his moral makeup, and to the course of his whole life. The character thus formed was simply projected into the judgeship, and at the instant of judicial birth he stood a fully equipped, ready-made judge. No change in thought, manner, or principle of action, was needed to adapt the man to the office. The result was, what is so well known, that there is no judicial work superior to his. This statement is a broad one, but it is deliberately made, and we rely on the record for proof of its truth.

In the year 1892 there was doubt as to whether Judge Bleckley wished to remain on the bench, and a letter was addressed to him asking him to allow it to be announced that he was a candidate for re-election. That letter was signed by 139 lawyers from different parts of the State, and no doubt would have been signed by every lawyer in the State if opportunity had been offered. In it this paragraph occurred: "For many years we have given much study and scrutiny to your work as one of the judges of the highest judicial tribunal of this State. That work furnished proof of your patience, industry, intellectual grasp and clearness, and of your devotion to truth and justice, to a degree rarely in any judge equaled, and by none excelled." That was the estimate of his work by the profession at that time. That it was just cannot be doubted. It was confirmed by subsequent service, and time has but served to strengthen the opinion that now prevails, which is, that there is not to be found anywhere finer judicial work.

As to style, his opinions "are terse, crispy, graceful, animated and entertaining." Indeed, we know of no legal literature that is more entertaining or instructive. His thoughts are clothed in plain, simple, yet well-chosen English. The expres-

sion is always felicitous. There is affluence of thought, and imagery, but no verbal finery. "Intellectual grasp and clearness" and "devotion to truth and justice" appear on every page, and furnish incontestable evidence of his goodness and his greatness. His judicial work will not fail with the passing of the years. It will link his name in honor with the history of the State for all coming time.

He resigned as Supreme Court Reporter in order to give his undivided time to the practice. He resigned as Chief Justice because the business of the Court had become too heavy to be adequately handled by three Judges. It was a mental and physical impossibility. The people had twice rejected proposed amendments to the constitution increasing the number to five Justices. His resignation settled the matter, and the number was promptly increased to six Justices.

In 1879 he resigned as Associate Justice of the Supreme Court because he was an overworked man. He had reached a state of physical exhaustion. With him industry was a cardinal virtue, and he was one of the most industrious of men. He believed that work was essential to happiness, and yet he was compelled to put it aside in order to save his life. In moments of leisure he had written some exquisite little poems, and on this occasion he read from the bench what he styled a "judicial poem." It was spread upon the minutes of the court, and we reproduce it. It is well worthy of preservation for its beauty, and also for the lesson it teaches. As he was then turning away from "the bliss of toil," there is much of sadness to be read between the lines:

In the Matter of Rest.

Rest for hand and brow and breast,
For fingers, heart, and brain!
Rest and peace! a long release
From labor and from pain;
Pain of doubt, fatigue, despair—
Pain of darkness everywhere,
And seeking light in vain.

Peace and rest! are they the best
For mortals here below?
Is soft repose from work and woes
A bliss for men to know?
Bliss of time is bliss of toil;
No bliss but this, from sun and soil,
Does God permit to grow?

Great intellectuality, love of justice, deep learning, simplicity, integrity, unfailing kindness and gentleness, combined to call forth the wonderful expression of respect of which we have spoken. In last analysis, the hope of progress in good among men lies in individual excellence. Purity of the individual points the upward way to a people, and the lesson taught by right living rises above all other teaching. That lesson Judge Bleckley taught.

Many centuries ago a wise man said: "By two wings a man is lifted up from things earthly, namely, by simplicity and purity. Simplicity doth tend towards God, purity doth apprehend and taste him." Without reference to dogma or formulated faith, we can not doubt that the good and great man of whom we write will share in whatever reward there may remain for the pure in heart, who, in all truth and fidelity, have trod the weary way of human life.

In the year 1892 Judge Bleckley wrote: "The favorable opinion of the bar, that grand tribunal to which every judge is accountable, is precious to me in a degree which no words can measure or express." And now, we, as representatives of the bar he loved so well, offer this memorial of his life and character, that it may be placed upon the records of the high tribunal of which he was once so distinguished and brilliant an ornament.

John L. Hopkins, Chairman.

Spencer R. Atkinson.
Samuel B. Adams.
Joseph R. Lamar.
Z. D. Harrison.
John M. Graham.
John W. Akin.
W. P. Price.
George W. Stevens.
Henry C. Peeples.
Albert H. Russell.
Robert McMillan.
W. L. Grice.
W. M. Hammond.
Peter W. Meldrim.

Joel Branham.
Frank H. Miller.
John I. Hall.
J. H. Merrill.
Henry R. Goetchius.
Wm. A. Little.
John S. Candler.
John C. Hart.
Leon A. Wilson.
I. E. Shumate.
W. D. Kiddoo.
Isaac Hardeman.
Joseph W. Bennett.
H. D. McDaniel.
T. B. Cabaniss.
R. L. Gamble.

Address of Judge John S. Candler.

May it please your Honors,—I fear that to attempt to add one word to the report of your Committee, as prepared and presented by its chairman, himself the life-long friend and associate of our great Chief Justice, may be considered of doubtful propriety; but from my childhood I was taught to love, honor and respect the names of Hiram Warner and Logan E. Bleckley, and to look upon their lives as representative of all that was best and greatest among Georgia's great judges and able lawyers. My father died when I was a child, but my sainted mother kept up the lessons that my father had begun; and to-day, upon the anniversary of her death, I wish to testify that to these lives and characters, as I was directed to study them, and to love them, I owe much of whatever success I may have had in my life as a lawyer and a judge; and if I have done any good for my fellow-man, much of my inspiration has come from them.

At this time, and at this particular hour, we may, with great benefit to ourselves, consider the leading elements in the character of the one whose recent departure from this life we mourn. Probably the most striking and conspicuous trait in the character of Judge Bleckley, and the one which most surely and distinctly marked him out among his fellow-men, and placed him upon that pedestal which has been erected for him in the hearts of those who knew and loved him, was his unswerving fidelity to his ideals of right. Even as he made the search for truth the sole object of his judicial labors, so, in his private life, the only question that ever determined his course of action in doubtful

matters was, what is right? Once that question was answered in his mind, all other considerations were brushed aside, and questions of expediency or policy were eliminated as unworthy of the great mind of the man.

Theoretically, he shared this trait with the majority of men, for nearly all of us want to be guided only by the good and true;—it was the practice of the theory, the ability to see and the courage to do the right, regardless of all conflicting considerations, that made of Judge Bleckley a man among men. This trait in his character sometimes led to unexpected and apparently paradoxical situations. By nature, gentle and urbane; having a heart big enough to embrace all humanity in its tenderness and love; preferring to speak good of all men rather than evil, there were yet times when a righteous rage possessed him, and the dove became a lion. It was easy to impose upon the gentle, good nature of Judge Bleckley, but it was never possible to impose upon his sense of right and wrong, and there are those to-day who can bear witness to the fact that when the lion within him was aroused the object of his anger was always made to feel the blow which only a strong man and a good man can deliver. But his wrath was against the wrong and not the wrong-doer; and when its object had been achieved, the serene calm, of which only great minds are capable, again possessed him, and he was once more the loving friend whose hand was always extended to uplift and support.

Old men loved and cherished him; young men venerated him, and looked upon him as the wise patriarch, combining within himself the wisdom and the goodness of the years; all men, young or old, who came within the sphere of his influence, admired him as a great man among men, in all that goes to make true greatness of mind and heart.

Out of the sorrow of his passing, the bench, the bar and the people of Georgia should take comfort in this thought: We should thank God, who raises up great men for great emergencies, that Georgia has had her Bleckley.

ADDRESS OF JUDGE JOEL BRANHAM.

May it please the Court,—Just a few words in addition to the report of the Committee, to link myself personally and intimately with the memory of this truly great and good man. The first time I ever saw Judge Bleckley was in Macon, Georgia, forty-three years ago. I met him there at that time, as my legal adversary, in the Supreme Court, held in the old Bibb County court-house, in the consolidated cases of Daly & Fitzgerald vs. Harris, and Harwell vs. Cohen. He was the victor. He was a young man in the vigor of life. He made the opening argument, I remember it well. It was in writing. He read it to the court with diffidence and some apparent embarrassment, and at its conclusion excused himself in order to return to Atlanta to meet another business engagement there. I remember also the forceful and classical character of that argument, and the high commendation of it made by the members of the court, as they came down from the bench, and by the members of the bar present at the time. Toil was the law of his life, and the two great commandments the basis of his religion. He loved the truth in all matters secular and religious. In his search for it his anxiety was to satisfy his own mind and then to express his views and opinions in fitting and exact words. He gave more weight to reason than to precedents. His method of composition was careful and laborious. On one occasion he said, "No thoughts I ever had were much until they were revised. It is characteristic of my mind that it produces its products in fragments, and anything that is of considerable length that I say, whether with the tongue or pen, consists of an assemblage of fragments at first, and, in order to connect them properly and give them uniformity of appearance, and sometimes of unity, I have to revise and then revise the revision."

He dealt with his thoughts as one capturing a nest of wild birds; he was unwilling to turn them loose until they were full-fledged and strong, and their plumage radiant with beauty; then only did he set them free, that they might go unerringly on their mission.

In the 78th year of his age he said, "Nearly all religion, so far as I know, has more or less dogma in it. There is no credible religion because it is above reason. Atheism fails because it offers nothing to supply the place of faith in God. I am coming to the time when I have got to face some religion. I have got to die by it." He was not content to see through a glass darkly by faith alone. He longed to pierce the veil. He was unwilling to wait, impatient to know. Confined, circumscribed, and limited by earthly bonds, while "still in this plodding sad pilgrimage," this pathetic drift between the eternities, like a dreamer enthralled by sleep who struggles with all his might to move an arm or raise an eyelid, his great soul labored to know the unknown. He could only say, "I know I do not know." May we not hope that in the full liberty of a disembodied soul he now sees face to face and knows even as he is also known?

Address by Mr. Frank H. Miller.

There is so much to be said of this wonderful man that, as a member of the Committee, I shall confine myself mainly to my personal recollections.

Mustered out of active service I was employed as Assistant to the Confederate States District Attorney, and as my duty frequently called me to the Supreme Court, there, in 1864, I met the new Reporter, Mr. Bleckley, who aided me greatly with advice and assistance. It was a case of "love at first sight," which grew through years into profound admiration, regard, and respect. After he resigned his position as Reporter in 1867, I failed to see much of him until he was appointed Associate Justice of the Supreme Court in 1875. It was then that his profound learning, patient industry, and untiring perseverance became well known to me, and was noised abroad.

In those days I generally spent the summer months with my family on the coast of Maine. There I met many of the most distinguished Canadian judges and barristers, from Montreal

and elsewhere, and in conversation with them learned how greatly he was admired. Each and all expressed to me their admiration of his learning, his originality, his genius, his conciseness, and with all his tenderness.

Later, when in response to the universal demand he returned to the bench, he added to all his other qualities a paternal manner and solicitude as to the personnel of the bar, and was lovingly called by the younger attorneys "the old Chief." He would sit and discuss with us things that were the subject-matter of interest at the time. As an instance I recall his views as to ærial navigation, then under consideration by the Army and Navy authorities, as to what form protection should assume against such attacks, then prominent from the publication of a book known as "Cæsar's Column," undertaking to predict as to warfare in the future from and in the clouds. I was much impressed by what he said, and never have forgotten it. It was substantially to the effect that so long as man was unable to navigate the air at will he could and would be controlled, and there would be law and order on the face of the earth; but if ever he was successful in navigating the air, go whither he would, with vessels of sufficient tonnage to carry war supplies, he could not and would not be controlled, and the world would become pandemonium.

Nothing is more often referred to in the books than Judge Bleckley's famous apothegm, "There are many cardinal virtues, but justice is the pontifical virtue." This he lived up to in all his relations in life, as a man, and in his judicial administration, day by day. As evidence of his conscientious discharge of his duty, I recall one occasion when attending the Supreme Court that I found him stretched upon a cot, beside the bench, in the court-room. On this cot he had laid for days, a sufferer from acute sciatica, but still hearing the causes as they were argued. I happened to have with me the remedy of a famous physician, which I promptly tendered, and which aided materially in relieving him and enabling him to resume his seat on the bench.

Judge Bleckley never knew how to spare himself. The con-

stant application, careful preparation, close attention which he gave, simply exhausted his nervous energy; and after twelve years' service he was forced unwillingly to leave the bench and retire for rest to the mountainous climate of Rabun and Habersham counties.

I had the honor once to have the Judge as a client. I had been of counsel in the administration of the estate of his wife's father. Financial misfortune had come to one of Mrs. Bleckley's investments of mill stock, which she had inherited, and, with the Judge, I sought to save it. It was about the success which finally attended, and was about to be realized, that I received his last message.

I never knew what a tender spot was in his heart for me and others until I was shown a letter he had written to Major Cumming, after he had retired from the bench, in which he said: "Allow me to mention what I often deplore, the restriction of my intercourse with many whom I most esteem and admire. Three such men besides yourself belong to Augusta — indeed four such: Miller, Fleming, Black, and Lamar. One of my standing regrets is that I must leave the world without seeing of these a tithe as much as would be pleasant and profitable to me. I pity myself for being excluded most of the time from such company, but solitude has a beneficence of its own, and I am highly blest in many respects; so, on the whole, I am reasonably content."

As a philosopher and seeker after truth he was unequaled. In his death we must bow to the inevitable, thankful to Providence for having been permitted to live in his generation. Of him we can say, just as he did of Judge Benning:

"In peace it was his lot to die;
In peace, O may his ashes lie!
And sweetest peace, while ages roll,
Attend his noble, manly soul!"

LOGAN EDWIN BLECKLEY

Address by Mr. Z. D. Harrison.

May it please your Honors,—Such an opportunity to pay tribute to the memory of Judge Bleckley should not be lost by one who truly loved him, and for whom he so often manifested kindliest regard.

All that has been said in the report of your committee has been so well said that I dare not venture to speak of the characteristics there described. But no mention of the religious side of the life of Judge Bleckley is made in that report, nor in either of the addresses to which we have listened, except in the brief reference made by Judge Branham. To my mind it is impossible for such a lover of truth and justice as is portrayed in the report and in those addresses to be irreligious. Judge Bleckley loved nature, and he believed in nature's God. He praised the works of the Lord and worshipped him. How truly he praised and worshipped could be known only by those who had opportunity, such as I once had, to witness his rapture and delight as he stood on the cliff of a high mountain, viewing the works of the Lord, while his great spirit seemed to commune with his God, and to strive, in the language of your committee's report, to "apprehend and taste him." Judge Bleckley's religion was not superstition, it was *faith*. Hear it declared in his own words:

FAITH.

Cast out into space
  For life and for death;
No ultimate base,
  No bottom beneath,
No limit or bound
  Above or around,
No wall at the side
  Or roof overhead,
No cover to hide
  Me, living or dead,
No refuge for thought or for sense:
  Yet I will not despair

As I drift through the air,
Afloat in the boundless immense;
In the depth of the night
Cometh faith without light,
Cometh faith without sight,
And I trust the great Sovereign unknown;
No finite or definite throne,
But the infinite, nameless, unthinkable One.

ADDRESS BY COL. I. E. SHUMATE.

May it please the Court,—For more than a quarter of a century, my relations with the distinguished Judge whose character we commemorate were delightfully cordial — may I not say mutually affectionate? I esteem it a privilege to add a few paragraphs commemorative of my distinguished friend.

A number of years ago I read a description of the "Legal Mind," which impressed itself so indelibly upon my memory that I can recall it substantially, in part at least: It is more than a reservoir in which to store fragments of so-called legal lore; it is something more than an index of cases; something more than a filing case in which to pigeon-hole court records; something more than a digest of the decisions of the Supreme Court of a particular jurisdiction. A man may be familiar with the statutes; familiar with the best forms of pleading; familiar with precedents, and yet know but little law. Law is not always the latest dictum of a court of last resort; an able lawyer may sometimes prevail upon the highest tribunal to change its decision, or upon mature deliberation the court itself may reverse or modify its decision. Law is the principle which must prevail, if justice is to prevail. He is a great lawyer who, in the light of great learning bearing directly or incidentally upon a matter at issue, clearly perceives the principle which controls it, and luminously presents and logically applies that principle. Tested by this definition, or description of the "Legal Mind," it can not be doubted that Judge Bleckley's was a legal mind of high order. A study of his dis-

cussion upon the law in his Revised Thoughts, read before the Georgia Bar Association at its meeting in 1905, will disclose a close resemblance between his conception of the law and the lawyer, and that embodied in the description I have attempted to give. When a young man I was concerned in a complicated case involving various difficulties, then pending in this court. In the division of labor among the members of the court, then but three, that case fell to Judge Bleckley. He did not hand down his decision during the term at which the case was argued, but held it over until the following term. During the vacation I chanced to meet him and ventured to ask, "Have you reached a decision of that case?" calling it by its title. He went into a statement of the difficulties involved, and said that he had devoted considerable time to thinking upon the case, but had failed to reach a satisfactory conclusion; that he had laid it aside and dismissed it from his mind for the present, but after a while he would take it up from a new point of departure and see if he could not discover the justice of the case. This is illustrative of his judicial method with difficult cases.

Not every legal mind is a judicial mind. We have all seen successful and even brilliant lawyers who were comparative failures when promoted to the bench; and we have seen lawyers of moderate ability and limited learning make creditable records as judges. Judge Bleckley was an eminent judge as well as a great lawyer. I do not err when I say that his was a legal mind of high order cast in a judicial mold.

It would be incorrect to say that important principles of law are always discovered and molded in the heat of discussion at the bar; and that the bench merely selects between conflicting theories and frames the theory selected in judicial form and phrase. Many recondite and controlling principles have been discovered and wrought out by the judges, often by a single judge, with but little reference to the contentions of opposing counsel. Judge Bleckley delighted to build upon bedrock.

His equipment for an ideal judge and lawyer was admirable. Richly endowed by nature, his powers were thoroughly disciplined. It would be exaggeration to say that his knowledge

was encyclopædic; yet his learning, legal and general, took a wide range and was remarkably accurate. There was scarcely a suggestion of eloquence in his spoken style; yet his clear, terse English, his analytical and incisive methods, and his faculty for apt and forceful illustration gave to his written page a striking individuality of style, which is distinctly impressed upon every page of his writings, whether in law-books or in literary productions. Added to this was a commanding character, integrity absolutely inflexible, a well-tempered judicial temperament, and a most agreeable and winsome personality — personal magnetism, if you please, which attracted to him scores of choice friends from every walk of life. These he "grappled unto his soul with hooks of steel."

Judge Bleckley said of his own mind, "that it produced its products in fragments, and that in order to connect them and give them unity of substance, he had to consider and reconsider, revise and re-revise them." May not this mental habit (if not *necessity)* explain in large degree his great fondness for retiring from the thronged thoroughfares and bustling life of the city to the quiet and romantic scenes of his mountain home? Was not this a favorite resort for the evolution of some principle, or the development of some theory, by which to solve more satisfactorily grave questions of law, or of religion, or of statesmanship, or of science, held in his mind for solution?

Not long since, in conversation with a clergyman, I read to him this from the Judge: "Religion, as I understand it, and that religion you can rest on and be safe in standing by to the last, may be defined as the essential relation between man and his Creator." Said I, "The Judge had faith in the source of his being; and sought to be in right relation with that source." This, too, I read: "If you have faith that whatever is is right, and can be depended on to take you out of the world as well as to bring you into it, your hope may be equally broad with your faith." And this also:

> "And I trust the great Sovereign unknown;
> No finite or definite throne,
> But the Infinite, nameless, unthinkable One."

I asked: "What do you think of that?" My friend answered: "Too indefinite — too intangible — lacks some essential elements of faith." I replied: "In what does his conception of Deity differ from this, which I have heard learned theologians use in their invocations?

"O Thou eternal One, whose presence bright
All space doth occupy, all motion guide.

* * *

"Whom none can comprehend, none explore,
Who fill'st existence with thyself alone,
Embracing all, supporting, ruling o'er,
Being whom we call God and know no more."

His simple (shall I say sublime?) faith challenges the respect of thoughtful minds of whatever creed or church. I venture to ask, was any faith, different from this in kind, possible to a mind so keenly analytical, so severely logical, and as sincere as sunlight?

A remarkable incident occurred during the argument of the Dartmouth College case in the United States Supreme Court. Mr. Webster, in speaking of his Alma Mater, threw such emotional energy into a few sentences as to visibly affect the learned Chief Justice Marshall. In the July number of *Munsey's Magazine,* a writer says of this incident: "Never before and never since has the spectacle been seen of a great and stern Chief Justice of the United States bending forward with tears welling to his eyes, while he listened to a legal discussion."

Often have we seen the tears welling to Judge Bleckley's eyes — another illustrious example of a great intellect and a great, tender heart harmoniously blended in the same great personality.

These two strong men were patrons of the drama, especially when one of Shakespeare's masterpieces was on the boards and a star actor held the stage. I have heard Judge Bleckley criticise an actor thus: "He broke the force of the thought by a misplaced emphasis — he marred the beauty and changed the sense of this line by a false punctuation,"—himself repeating the line correctly.

Senator George Graham Vest, who had often thrilled the United States Senate by his eloquence, a short time before his death, when exceedingly feeble, and when the silver trumpet was muffled under the shore, produced a most respectful silence in that august body by repeating Tennyson's "Crossing the Bar." Before reading an account of that impressive incident, I had not read, or so much as heard of that beautiful poem. Since then I have run it through my mind a hundred times. It does not grow old. Frequently when I have thought of Judge Bleckley's poetic temperament and of his poetic genius; when I have thought of his unique religious creed, and of his implicit, yet anxious and questioning faith, this beautiful poem has recurred to my mind as being appropriate to our friend when about to put out to sea:

"Twilight and evening bell, and after that the dark!
And may there be no sadness of farewell when I embark;
For though from out our bourne of time and place the flood may bear me far,
I hope to see my Pilot face to face when I have crossed the bar."

MR. JUSTICE LUMPKIN RESPONDED FOR THE COURT, AS FOLLOWS:

Some of the friends present may have known Judge Bleckley longer than I. None, I think, admired and loved him more than I. For over thirty years I knew him. It was my good fortune to serve this court first as assistant reporter, and then as reporter, while he was on the bench. And I deem it a privilege on behalf of the Court to add a few words to what has already been said.

To think of the great man, whom but yesterday we all saw and loved, as dead, seems strange indeed. That the form we knew so well will move among us no more; that the wondrous brain which grappled with the profoundest problems of law, of thought, of life, has fallen asleep; that the great heart has ceased to beat; that the tireless hands, always ready to take up life's burdens and duties, are folded forever on the breast of peace, seems passing strange. And yet, he himself did not look upon

death as a disaster or an unmixed evil. It was Nature's call to her children to come home to rest, in Nature's own good time. He believed that

> "The something that ought to befall
> Will happen at last unto all."

Indeed, when he looked at life, with its cares, its mixture of joy and sorrow, its hopes and disappointments, its unsatisfied longings, its endless strivings, and the cost of it all, and compared it with the peacefulness of death, he said:

> "How costly is life, what countless expense,
> To temper the blood and comfort the sense,
> And nourish the mind and chasten the breast,
> And keep the heart ruled in its stormy unrest;
> But death unto all is offered so cheap;
> There's nothing to pay for falling asleep,
> Save closing the eyes and ceasing to weep."

Death was to him not only inevitable, not only natural, but it was also a part of the plan of infinite wisdom, and that plan must be good. He said:

> "Nor at this should we murmur, or sigh, or repine;
> Man's weakness, as well as his strength, is divine;
> The day is no better bestowed than the night,
> And darkness is precious, as well as the light."

And thus when his work was done, esteemed, loved and honored, he lay down beside the rugged pathway of life; and it being evening, he fell asleep.

On his eightieth birthday, we come to pay some tribute to his memory, to place in the official reports, which he dignified with his learning, and illumined with his utterance, a permanent memorial of his greatness and his worth; and then to separate, bearing in each breast a sense of loss which words can not adequately express. But no monument of bronze or marble, no written words of ours, though earnestly and lovingly penned, will be his most

permanent memorial. His real monument he builded himself. It is in the Reports of the Supreme Court of this State. His real memorial will not be inscribed on written page or chiseled on dull, cold marble, but it is written deep in loving memory in the hearts of the bar and people of Georgia.

Born amid the mountain scenes of Rabun County, he was imbued with something of the lofty views and far visions of the peaks that raised themselves toward heaven. And yet he loved the valleys too, the fields, the woods, the winding streams. I have sometimes thought that his love of nature was not merely of its inanimate beauty, but that he saw in it a deeper, subtler meaning, a pervading power of the Infinite, and that he felt a kind of friendship and fellowship for mountain and valley, for wood and stream. As he has often been seen standing on some hilltop, gazing out into the infinite blue, and turning his face toward the rising or setting sun, it has tempted one to say of him:

> "The bush hath friends to meet him,
> And their kindly voices greet him
> In the murmur of the breezes and the rivers on their bars,
> He sees the vision splendid of the sunlit rays extended,
> And at night the wondrous glory of the everlasting stars."

The report of the committee has given so complete a biographical sketch of Judge Bleckley that a repetition of it would be useless. I would emphasize only one or two of his characteristics. His intellect was great. His heart was tender and loving. Like the structure of his native mountain home, the towering peak of his intellect lifted itself toward the sky. But below lay the beauteous valley of the heart, where sweetest flowers of love and friendship bloomed. His industry was enormous. His memory was phenomenal. But if I should seek to select two characteristics which were more strikingly exemplified in him, I should say, first, the purity and guilelessness of his soul; and second, and allied to it, his love of truth. Truth at the bar, truth in emotion, truth in action! Truth to him was priceless. Let it cost what it would, he would stand by the truth.

It has been said that "art is the joy which a man has in his work." Measured by this standard, how great an artist was Judge Bleckley. Material gain and pecuniary rewards were of small importance to him. It was work well done in which he found delight. And thus it was that from the serene nobility of his soul in perfect candor he could say, "Service is better than salary, and duty more inspiring than reward."

It seems to me that one of the best tests of a man's greatness is the effect he produces on those of a younger generation. The love of friends of our own age may overlook our faults; but he is great indeed who leaves his impress for good on the lives of those who come after him. The young men loved Judge Bleckley, even those who knew him only when his face was turned to the west, his shadow fast lengthening toward the east. As it is written that Elijah, mounting upward on his blazing chariot wheels, did drop his mantle, which young Elisha caught up as it fell, oh may it be that the mantle of this great man may fall upon the shoulders of some young prophet who shall arise to point the way not merely to material wealth, but better far, to truth, to honor, to eternal right, for this our beloved Georgia!

Poet, philosopher, jurist, friend, farewell!

While others may tell of his fame and his work, this be my humble tribute to my much loved friend: When each year the sunshine warms to life the flowers of spring — coming in the morning to gladden the earth, or resting at eve on the mountains he loved — no sun ray will fall with purer light nor brighter flowers bloom above a truer breast than those that rest and blossom on the grave of Logan E. Bleckley.

The court concurs in the high estimate and the sincere regard which has been expressed for our departed brother, both as a man and as a judge. His memory shall be cherished while the court exists. A page of the minutes will be set apart and dedicated to his memory, and the proceedings will be published in the Georgia Reports. Let a certified copy be furnished to his family.

LOGAN E. BLECKLEY.

Sketch taken from "The Supreme Court of Georgia," an article by Walter B. Hill, then a member of the Macon Bar, published in *The Green Bag,* Boston, February, 1892.

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LOGAN E. BLECKLEY

Chief Justice Bleckley is as tall as Bishop Brooks, and every inch is pure genius. It is natural with him to think, speak, and act in an unconventional way; but the thorough saneness of his character is attested by the fact that this marked individualism never passes into eccentricity.

If I were asked to state in a word the most prominent characteristic of his mind, I should answer, provided I was first permitted to define the meaning of the word, Wit. I do not, of course, mean mere drollery, although that is continually springing up in his dryest decisions, like a fountain leaping from a bed of sawdust and

> "Shaking its loosened silver in the sun."

Sometimes the fun seems to be just for its own sake, as in a will case where one Potts was charged with making Cupid kin to cupidity by a mercenary marriage, he gravely asks, "Why may not a Potts marry for love?" Oftener pleasantry is used to expose error:

> "A gentler death shall falsehood die,
> Shot through and through with cunning words."

But it is not to these significations of wit that I refer. The definition that I would give would be that striking epigram of George Eliot, "Wit is wisdom raised to a higher power." It is a curious fact that perfect clearness of thought and expression often affects the mind like wit. The style of the late Judge J. S. Black had this remarkable quality. It is present in all of Judge Bleckley's utterances, legal and literary.

It is another form of illustrating the above definition to say that Judge Bleckley has a legal imagination. Lawyers whose practice has brought them before many courts, State and Fed-

eral, say that they never saw his equal in "catching a case" from the opening statements. And they are often amazed when by a flash of legal insight he discloses views arising on the record which months of laborious study have never enabled them to see.

In the selection of quotable extracts, the discussions of Judge Bleckley present an embarrassment of riches. The description of the lawyer who was cut off at twelve o'clock Saturday night with an undelivered speech has become familiar to the profession, through Mr. Snyder's book, "Great Decisions by Great Judges."

From a single volume of the Georgia reports nearly all the following have been culled:—

In Harriman against First Bryan Baptist Church, which involved a breach of contract to furnish a steamboat for an excursion for the society, the Judge says: "A committeeman on board was threatened with a most profane form of immersion."

In Kupperman against McGehee, he says: "Trusts are children of equity; and in a court of equity they are at home,—under the family roof-tree, and around the hearth of their ancestor."

In Nussbaum against Heilbron, a son carried on business in the name of his father, because he felt that his own name was under a mercantile cloud. As Judge Bleckley expresses it: "According to the charges of the bill, the father had no capital and the son no character. The man without character carried on the business in the name and upon the credit of the man without capital."

In Dee against Porter we find the following: "It not infrequently happens that a judgment is affirmed upon a theory of the case which did not occur to the court that rendered it, or which did occur and was expressly repudiated. The human mind is so constituted that in many instances it finds the truth when wholly unable to find the way that leads to it.

> "The pupil of impulse, it forced him along,
> His conduct still right, with his argument wrong:
> Still aiming at honor, yet fearing to roam,
> The coachman was tipsy, the chariot drove home."

In Forrester against State, the defendant undertook to evade the law against retailing intoxicating liquors without a license, by having his cook sell them in the kitchen. "In the defendant's kitchen, by his servant, in his presence, and with his coöperation, through the responses, 'Go to Mary' and 'Give the money to Mary,' the traffic was carried on. There is little doubt that the defendant was the deity of this rude shrine, and that Mary was only the ministering priestess. But if she was the divinity, and he her attending spirit to warn thirsty devotees where to drink, and at whose feet to lay their tribute, he is amenable to the State as the promoter of forbidden libations. Whether in these usurped rites he was serving Mary or Mary him, may make a difference with the gods and goddesses, but makes none with men."

In Lester against Lester the question was about attaching a husband for contempt in refusing to pay alimony. This is what the Judge thought about it: "If a man, though having health, will not work for the support of his wife and minor children, a court cannot assume direct control of his will and muscle and compel him to labor. To be idle (taking the consequences) is one of the privileges of a freeman, unless he is convicted penally of some offence, and put to work as a punishment. But while a civil court cannot order an able-bodied man to go to work, it can, in a proper case for alimony, order him to contribute so much money, at such and such times, to the maintenance of his dependent family, and leave him to provide the money by the free and voluntary exercise of his faculties, mental and physical, or by any other means at his command. The attachment will bring the actual resources of the respondent to a practical and decisive test. Pressure is a great concentrator and developer of force. Under the stress of an attachment, even the vision of the respondent himself may be cleared and brightened, so that he will discern ways and means which were once hidden from him or seen obscurely."

In speaking of the power of amendment on appeal, in Burrus against Moore, he says: "Curative measures are not restricted to the early stages of a case; our 'court physicians' now treat chronic disorders as well as acute ones."

In Dodd against Middleton, the Judge dissented in the following terms: "If I could be reinforced here by the votes, as I am by the opinions, of the Supreme Judicial Court of Massachusetts and the Court of Appeals of New York, I could easily put my brethren in the minority; but as it is, they are two against one, and I have no option but to yield to the force of numbers, — in other words, to "the tyranny of majorities." Though twice beaten, I am still strong in the true faith, and am ready to suffer for it (moderately) on all proper occasions."

"Courts of final review are bound by the rule of *stare decisis* both as a canon of public good and a law of self-preservation; nevertheless, where a grave and palpable error, widely affecting the administration of justice, must either be solemnly sanctioned or repudiated, the maxim which applies is *fiat justitia ruat coelum.*"

Judge Bleckley has, of course, the defects of his qualities. The acute and subtle intellect will question and doubt, where minds of different cast will rest with certitude. The result of this highly critical faculty caused him great judicial travail, and in 1880 he broke down under his labors. His letter of resignation to the Governor was as follows:—

ATLANTA, GA., Jan. 22, 1880.

HIS EXCELLENCY, ALFRED H. COLQUITT:

DEAR SIR,—I hereby resign the office of Associate Justice of the Supreme Court for the following reasons:—

First, I am not sufficiently learned in the law to be qualified on a large and liberal scale for judicial functions. In consequence of this deficiency I rarely know how to dispose of difficult cases until after a degree of labor which exhausts me in mere preparation for deciding. It follows that I am generally behind in writing out my opinions. At present I am much behind.

Second, my health threatens to fail unless I change my mode of life.

This resignation is designed to take effect on the first day of the approaching February term.

Very respectfully your obedient, humble servant,

L. E. BLECKLEY.

There was universal confidence in the painful and unaffected modesty that prompted this letter; although in the opinion of

the bar and the public there was a grim humor in it, coming from the one man in the state who was preëminently the best qualified for the bench.

The Governor's graceful reply was as follows:—

EXECUTIVE OFFICE, Jan. 26, 1880.

Judge LOGAN E. BLECKLEY, Associate Justice Supreme Court, Atlanta, Ga.

DEAR SIR,—Your resignation as Associate Justice of the Supreme Court of Georgia has been received, and I hereby give you official notice of its acceptance, to take effect on the first day of the approaching February term.

Permit me to express regret that you should feel it due to yourself to close your official duties and retire voluntarily from the high trust you have so faithfully discharged. I must beg to dissent from your modest estimate of your qualifications, and to assure you that I would not feel justified in accepting your resignation based alone on that ground. The consideration of your health, however, leaves me no alternative.

With high respect for you personally and officially, I am, very respectfully, Your obedient servant,

ALFRED H. COLQUITT.

The most interesting episode of the resignation, however, was Judge Bleckley's poem on Rest, which he read on leaving the bench. Coming as it did from one who was in a state of physical collapse from overwork, its recognition of labor as the divine law for man was full of bravery and pathos.

IN THE MATTER OF REST.

Rest for hand and brow and breast,
For fingers, heart, and brain!
Rest and peace! a long release
From labor and from pain;
Pain of doubt, fatigue, despair,—
Pain of darkness everwhere,
And seeking light in vain!

Peace and rest! Are they the best
For mortals here below?
Is soft repose from work and woes
A bliss for men to know?

Bliss of time is bliss of toil:
No bliss but this, from sun and soil,
Does God permit to grow.

During Judge Bleckley's retirement and recuperation he had time, between the intervals of consulting practice to which he sparingly returned, to deliver a number of literary addresses. The most remarkable of these were a series on Truth, — "Truth in Thought and Emotion," "Truth in Conduct," and "Truth at the Bar." From these and other papers I extract a few paragraphs at random:

"Energy in goodness is often attended with a corresponding energy in well-meant evil. A striking instance of this is furnished by the history of religious persecution. Not many centuries ago it seems to have been one of the most sacred duties of a good man to burn a better one than himself."

The following extracts from a Commencement Address contain a frank recognition of the demoralized state of Southern opinion, and a courageous assertion of his own principles:—

"And I will venture to add, at the risk of meeting with some dissent possibly in my audience, certainly beyond it, that there is the same reason for rigid honesty in politics and public life, in elections and with electors and elected, as in ordinary private business or personal conduct. The political devil is no more to be fought with fire without terrible consequences to the best interest of the community, than is the devil of avarice or envy or ambition, or any other of the numerous devils which infest society."

"I speak from a standpoint quite outside of politics and party lines, and what I say may be too visionary and theoretic for practical working; but if we have reached a stage of degeneracy where virtue has ceased to be practical, and where vice and fraud are forces of such potency that they can be met and resisted only by forces of like kind, I think wisdom is already a lost art, that we are on the confines of perdition, and that ere long we shall tumble over the wall and be swallowed up in the pit."

The following paragraphs are selected from "Truth at the Bar," — an acute and metaphysical statement of the philosophy of legal procedure:—

"Some meritorious cases, indeed many, are lost in passing through the justice of procedure; but they are all justly lost, provided the rules of procedure have been correctly applied to them. That a just debt is unrecognized, a just title defeated, or a guilty man acquitted, is no evidence that justice has not been done by the court or jury. It may be the highest evidence that justice has been done, for it is perfectly just not to enforce payment of a just debt, not to uphold a just title, not to convict a guilty man if the debt or the title or the guilt be not verified. It is unjust to do justice by doing injustice. A just discovery cannot be made by an unjust search. An end not attained by just means is not attainable at all; ethically it is an impossible end. Courts cannot do justice of substance except by and through justice of procedure. They must not reach justice of substance by violating justice of procedure. They must realize both, if they can; but if either has to fail, it must be justice of substance, for without justice of procedure courts cannot know, nor be made to know, what justice of substance is, or which party ought to prevail. As well might a man put out his eyes in order to see better, as for a court to stray from justice of procedure in order to administer justice of substance."

"The problem, How not to tell the truth without telling a lie, is suggested for solution over and over again, not only to lawyers, but to physicians, bankers, brokers, merchants, mechanics, farmers, even perhaps to clergymen, and, it may be, to the very ladies. Nothing would simplify intercourse for business, pleasure, civility, and ceremony so much as to give truth the right of way through all human affairs. Those of us who dislike the trouble of suppressing, and are skilled in arts of evasion, could heartily wish this were practicable; but it is not. It would be wiser to grant free passage to a cyclone. In the use of truth the lawyer is eclectic; say, if you please, he is economical. But so is everybody else, and rightly so. A discreet silence is as much, and perhaps as often, the dictate of virtue as of

interest or shame. A man who does not know how to keep truth in the house knows still less how to put it out of doors. It would be much safer practice to disclose nothing than to disclose everything. Universal silence would do less harm than universal and unlimited communication. The world would be happier dumb than with no power to hush.

> "'The day is no better bestowed than the night,
> And darkness is precious as well as the light.'"

Judge Bleckley does not, like Blackstone, take a rose-colored view of the law. Its delays and its fossils are thus described:—

"Those capital prizes of science termed fossils are especially odious. They are stigmatized by the practical with the very superlatives of aversion and contempt. A fossil is lost matter, corresponding, in a physical reprobation, to a lost soul in the spiritual. Stripped to its essence, it is time petrified by malediction, the past preserved by a curse. The law, intensely modern, always leagued in sympathy with the present, always devoted to the practical, favors no fossils but its own. These it cherishes — sometimes too fondly — as priceless gems, inherited from ancestral opulence, the hoards of those grand old legal millionaires, the early sages."

"The profession will always number among its members some typical lawyers, envoys from the past to the present, messengers and expounders of precedent."

"Time is the increasing factor, the growing element of modern life. Progress is the realization, in short time, of what formerly occupied long time. At least this is one form of progress, and that form with which we of the nineteenth century are in immediate contact, — a century that, if measured by the results in some of the spheres of human activity, might well count for a thousand years. How is it with practical remedial jurisprudence? Is it up with, or is it behind the age? Compare it with other business, public or private, — with operations of the War Department, the Navy, the Treasury, the Post-Office, the Interior; with commerce, manufactures, banking, transportation, mining, farming; with the venerable and conservative

vocations of teaching and preaching, — with anything, and what is its relative position? The main bulk of the world-work is ahead of it. Several branches of that work — for instance, the postal service, general transportation, commerce, and manufactures, — are so far in advance that the law seems to crawl, whilst they go on wings."

The following discussion of intellectual honesty has an autobiographic interest:—

"No man on earth knows enough at any given hour to qualify him to be a judge of the Supreme Court of Georgia. Such, at least, is my opinion. I have long since proved that I have never known enough at any one time to suffice for the duties of a single day. Every day I needed more knowledge than I had, and every day I acquired more. Only by so doing could I meet and discharge the demands made upon me by current business. An inventory of my permanent outfit for judicial functions would show the following particulars: First, a clear and impressive realization of my own ignorance, along with an alert faculty for distinguishing between what I know and what I do not know; secondly, a fair acquaintance with the general principles of law; thirdly, the power — partly natural and partly acquired — to discriminate between true law and most of the counterfeits or imitations of it; and fourthly, a determination to ascertain, if possible, the true law of each case, at any cost of care and labor.

"With an outfit so restricted as this I have found it practicable to turn off judicial product of an average quality, though on a few occasions I have had to hire help by the day's work, at an expense of more than half my *per diem*. 'To thyself be true' has its first and deepest application to the processes of our thinking; to the discipline, scrutiny, and analysis of our thoughts. He who is unfair in dealing with his own mind unfits himself for fair dealing with other minds. In consequence of having committed actual fraud upon himself, he attempts to commit constructive fraud on all to whom his arguments are addressed. He need not mean or intend to deceive, — for one who offers the fruits of self-deception to others, though ever so honestly, attempts unwittingly to deceive by the very offer; and he does

deceive by it if the offer is accepted. The counterfeit coin which passes as genuine is none the less counterfeit because he who offers and he who takes it both believe it to be good money. The great security for honest argument is honest thinking. And one essential of honesty is accuracy, at least in those minds which are capable of accuracy. Perhaps there are some which are incapable of it, but of this I am not certain.

"It is incumbent upon every mind that thinks with a view to argument or discussion, whether in the field of morals, politics, theology, legislation, law, or general science, to be perpetually on its guard against self-deception. Only by so doing can it shun fraudulent negligence, though it may not intend to commit fraud in fact. As to the latter kind of fraud, there ought to be no doubt of its turpitude. To steal a conclusion and profit by it to another's injury should be regarded as no less forbidden in the court of conscience than to steal an article of property. A larceny committed by false logic or florid rhetoric, used intentionally to mislead, deserves rebuke quite as much as would a false reckoning in casting up an account, and thus producing a false balance by design. Fair-mindedness, honest thought and its honest utterance, without the petty pride that too often attends exceptional frankness, would, if generally prevalent, contribute more than all other forces to the discovery and dissemination of truth. I speak not of an absent virtue, but of one which has always been in the world. It prevails widely, but it ought to be universal."

The concluding paragraph of the following dissertation on "Doubt" probably expresses a state of mind not uncommon in the theological ferment of our times:—

"Correctness of thought is conformity of thought to things, and of thought to thought. I have never met any person who believed he did not know that which he knew; but nothing is more common than for us to think we know what we do not. We never mistake our knowledge for ignorance, except perhaps in extreme metaphysics; but we constantly mistake our ignorance for knowledge. And the remedy for this, so far as there is a remedy, is the practice of mental candor until it becomes a

fixed habit, the cultivation of an intellectual conscience. He whose opinions are all convictions is as reckless intellectually as he is morally whose assertions are all categorical. Conviction has no more right to go beyond evidence and just inference than statement has to go beyond conviction. A man should be hardly less careful not to deceive himself in thought than he is not to deceive others by expression. It is as hurtful to truth to decide when we ought to doubt, as to doubt when we ought to decide. We should feel no reluctance to confess our ignorance always to ourselves, and when circumstances call for it to others. The phrase, "I don't know," honestly and fairly used, humbles us; but when so used, it covers much the larger part of truth. We should use it honestly and fairly, both to ourselves and others; always, however, remembering that we are not to deny, even in thought, the existence of a thing because we do not know of its existence. It is the lack of such knowledge that constitutes ignorance. This lack is the very stuff of which ignorance is made. If we knew all existences, taking the term as including both the actual and the potential, we should know everything, for there is nothing else to know. We have no more warrant for dogmatizing at random negatively than affirmatively. The forms of language force us very often to be dogmatic in expression, but this does not oblige us to be dogmatic in thought. If we attempted to communicate in discourse all the qualifications and all the shades and degrees of qualification that we realize, or ought to realize, in thinking, we should only perplex or mislead our hearers. It has been remarked that no one ever means precisely what he says, for no one ever says precisely what he means. Doubt is a state of mind proper to any high degree of uncertainty. It is a question whether anything is uncertain in and of itself, — whether all contingency is not in knowledge, none of it in the objects of knowledge. The so-called contingent events of to-morrow are at this moment uncertain to the whole human race; but if they are known to God, they have certainty relatively to him. He never doubts. Whether we will or not, we must live with uncertainty and die with it. Relatively to us it extends over a part of truth as surely as certainty

does over another part. To doubt too much is to carry over by self-deception the certain into the uncertain; to doubt too little is to carry over by self-deception the uncertain into the certain. Not to do either should be a matter of solicitude with every lover of truth. The repose of conviction is very desirable and very seductive. To doubt is never pleasant, often painful, sometimes agonizing. And in so far as this prompts to inquiry and urges us to decision, it is very useful; but when it induces us to decide without inquiry or evidence, or without the proper use of them, the result is like declaring victory before fighting the battle. If we were so constituted that we could not doubt, what security would there be for truth? What could more cripple the mind than to deprive it either of the power of doubting or the power of believing? To face frankly and fairly the terrors of uncertainty requires courage. Indeed, to think at all, responsibly, rationally, and with absolute fidelity to truth, upon many subjects requires the highest degree of courage. It is easier, perhaps, to stand before a loaded cannon and see the match applied, than to adopt a conclusion utterly destructive to past convictions long cherished, and to the authority upon which they rested, in a matter of vital interest and of personal concern."

In 1887, on the death of Chief-Justice Jackson, Judge Bleckley returned to the bench as his successor. Since that time he has done continuous work; but having found that the body is not an indestructible machine, he works with more regard for physical limitations. He has given much attention to the matter of reducing the unnecessary work of the court. An Act of the Legislature was recently passed, which allows the plaintiff in error to specify in his bill of exceptions only such parts of the record in the court below as bear upon the exceptions. The opposite party may specify others, if he thinks other portions necessary. This gets rid of much chaff in every case, and saves expense to the parties. It is understood that this measure originated with the court.

Judge Bleckley is the author of a very useful device to secure a fair statement of the case at the outset of the argument. A

rule of court requires the Reporter of the court to prepare an abstract or statement of each case, either party having leave to suggest additions or corrections.

Judge Bleckley's disclaimer of learning, "lay or legal," is of a piece with his reason for resignation in 1880. His point of view is the pinnacle which not many so-called learned men ever reach, — the knowledge of the extent of the domain of ignorance. He is one of the few men in Georgia who could hold his own in a discussion of German metaphysics. But this is one of many diversions which he has resolutely denied himself in a stern devotion to the law, — a devotion which he so well described, because drawn from his own experience, in the beautiful tribute to Justice Hall, and to which he refers, both in earnest and in jest, in his "Letter to Posterity," published elsewhere in this number. What form of self-denial is at once so bitter and heroic as that of the intellectual man who, with capacity and desire to "take all knowledge for his province," calls back his faculties from the universe of thought, study, and speculation which they seem created to explore, and concentrates them on a single line of human activity, because, forsooth, the mind is "chained to a body of death," and the butcher's bill must be paid, and good work on the one task in hand requires the sacrifice?

The high reward of such a sacrifice — the thought which reconciles the man of genius with the work of bar and bench — has never been so aptly expressed as by Judge Oliver Wendell Holmes, — "the subtle rapture of a postponed power;" "the intoxicating authority which controls the future from within by shaping the thoughts and speech of a later time;" such men are to be honored, not by regiments moving with high heads to martial music, but by a few others, lonely as themselves, walking apart in meditative silence, and dreaming in their turn the dream of spiritual reign."

A LETTER TO POSTERITY.

Written by Judge Bleckley and published in *The Green Bag*, Boston, February, 1892.

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A LETTER TO POSTERITY.

Some humorous compliments fabricated by the *good* humor of the "Albany Law Journal"[1] have rendered me conspicuous in the eyes of that restless part of mankind, the seekers after photographs and biography. To supply photographs is only to increase the cost of living, but to concoct autobiography involves psychological distress, especially to a person whose stock of materials is no larger than mine.

One of the applicants for a sketch of my life insists that I ought to lay open my career and expose my true inwardness to posterity. Protesting that my reluctance has been overcome by his importunity (that is, by an irresistible force impinging upon a movable body), and that it would never have yielded to anything less powerful, I have written with my own hand the following epistle to that portion of the human race for whose enlightenment my kind-hearted tormentor is so anxious.

ATLANTA, GA., A. D., 1891.

TO POSTERITY: *Greeting.* I regret that I shall be absent when you arrive, and that we shall never meet. I should be pleased to make your acquaintance, but it is impossible to await your coming, the present state of the law of nature being opposed to such dilatory proceedings. There is no hope of amending that law in time for my case. Though aware of your approach collectively as a body of respectable citizens, I shall never hear of a single individual among you. Nor is it likely you will ever hear of me by name, fame, or reputation, unless with the aid of a microphone of extraordinary power. Nevertheless, if the highways between the ages remain in good condition and repair, this communication, though virtually anonymous, may possibly reach you. In that event I bespeak for it your attention for one moment per generation, which, on a fair division of your valuable time, will be my full share and something over. I claim

[1] See, besides other instances, vol. xxiii. p. 264.

no vested right to your notice. If I have any color of title, it is contingent upon the quality of my services to the public as a member of the Supreme Court of Georgia. Of these services there is documentary evidence, though of a perishable nature, in certain volumes of the Georgia Reports, [1] to which I refer with unaffected diffidence. I must not be understood as requesting you to read all of my opinions, but on the contrary, I give friendly warning not to read half of them, unless you desire to undergo a certain drowsy experience which is commonly called being bored. In that state of feeling scores of them were written. It is not to be expected that the reader would suffer less than the writer. I have a theory that such writings might be terse, crispy, graceful, animated, and entertaining; but mine afford few specimens of that kind. Yet, to treat them with justice, I am sensible that they are not more dry than those of some other judges.

I came to the bench as an Associate Justice of the Supreme Court in the summer of 1875, and resigned early in 1880, worn down and tired out. My last deliverance was "In the Matter of Rest," [2] a brief judicial poem. I would conciliate the critical taste of future generations by craving pardon, not for the verses, but for the doubtful decorum of reciting them from a seat traditionally sacred to the oracles of prose. The loss of my ability to labor without great fatigue made me long for rest, but did not weaken my conviction that labor is the twin brother of happiness,—the moral of the poem. Others might have suggested it as well or better in prose, but I could not. Perhaps I ought to confess that divers other poems (happily none of them judicial) may be laid to my charge. During most of my life I have had a strong and to me unaccountable propensity to metrical transgression. Over and over again have I suffered the pains and penalties of poetic guilt. Besides a score or two of convictions, I have had many trials and narrow escapes. But even now I am not a hardened offender, for a bashful hesitation always tempers my gallantry with the Muses.

[1] 54 to 64 Ga. 77 to 83, and some not yet published.
[2] 64 Ga. 452.

My resignation was the result of overwork, and overwork was the result of my ignorance of the law, together with an apprehension that I might be ignorant when I supposed I was not. To administer law it is desirable, though not always necessary, to know it. The labor of learning rapidly on a large scale, and the constant strain to shun mistakes in deciding cases, shattered my nerves and impaired my health. In its effect on the deciding faculty, the apprehension of ignorance counts for as much as ignorance itself. My mind is slow to embrace a firm faith in its supposed knowledge. However ignorant a judge may be, whenever he thoroughly believes he understands the law of his case, he is ready to decide it, — no less ready than if he had the knowledge which he thinks he has. And he will often decide correctly, for the law *may* be as he supposes, whether he knows it or not. My trouble is, to become fully persuaded that I know. I seem not to have found the law out in a reliable way. I detect so many mistakes committed by others, and convict myself of error so often, that most of my conclusions on difficult questions are only provisional. I reconsider, revise, scrutinize, revise the scrutiny, and scrutinize the revision. But my faith in the ultimate efficiency of work is unbounded. The law is too often unknown, but is never unknowable. I finally settle down, painful deliberation ceases, and I doubt no more until I am engaged in writing out the opinion of the court, when I discover perhaps that the thing is all wrong. My colleagues are called again into consultation; we reconsider the case, and decide it the other way. Then I am satisfied; for when I know the law is not on one side, it must be on the other.

I remained in private life until January, 1887, when on the death of Chief-Justice Jackson I became his successor. My term of office will expire with the year 1892.

I will now recount briefly the principal events of my personal history prior to the beginning of my judicial career. I was born in the woods, amid the mountains of northeastern Georgia, July 3, 1827. My native county, Rabun, had then been organized but seven or eight years, up to which period it was the wilderness home of Indians, — the Cherokees. At eleven years

of age I commenced writing in the office of my father, who at that time was a farmer without any lands and tenements, and with very few goods and chattels. He lived on a rented homestead, one mile from Clayton, the county town, and was clerk of three courts, — the superior, inferior, and ordinary. He was a man of strong intellect, fair information, and some business experience. He had been sheriff of the county. A more sterling character was not in the world, — certainly not in that large group called the middle class, to which he belonged. Loyal to truth, he scorned sham, pretence, and mendacity. He was a native of North Carolina, as was my mother also. His blood was English and Irish combined; hers German.

I gradually acquired skill in office business, and more and more of it fell to my share, till at length I could give all of it competent attention. In this way, and by observing what was done and said in the courts, I contracted a relish for law, and became familiar with legal documents and forms of procedure. The statutes, strange to say, were pleasant reading, and at intervals I read them with assiduity. Of course, my comprehension of them was imperfect, and still more imperfect was my mastery of the Constitution of the State and that of the United States. But I had a boy's acquaintance with all these, or with most of them, by the time I was seventeen. At that age I borrowed Blackstone and some other elementary books, and entered upon the study of law in earnest. There was no resident lawyer in the county; so I read alone, going once or twice to an adjoining county to be examined by some attorneys who took a friendly interest in directing my studies. One of these was the late Judge Underwood, to whose memory I have from the bench paid a tribute in such words as I could command in an extemporaneous address,[1] but not such as he deserved.

Having prepared myself crudely for admission, I was admitted to the bar in April, 1846, shortly before I was nineteen. Though for the following two years I had a monopoly of the minor practice, and a fraction of that which was of some importance, the litigation of one sparsely settled mountain county

[1] See 83 Ga. 817.

which fell to my share was too inconsiderable to break the continuity of my studies, or rather my legal meditations. I was absorbed, and had visions. I saw Sovereignty. I beheld the Law in its majesty and beauty. I personified it as a queen or an empress. It was my sovereign mistress, my phantom lady.

Oh, lady, lady, lady!
Since I see you everywhere,
I know you are a phantom,—
A woman of the air!
I know you are ideal,
But yet you seem to me
As manifestly real
As anything can be.
Oh, soul-enchanting shadow,
In the day and in the night,
As I gaze upon your beauty
I tremble with delight.

If men would hear me whisper
How beautiful you seem,
They should slumber while they listen,
And dream it in a dream;
For nothing so exquisite
Can the waking senses reach,—
Too fair and soft and tender
For the nicest arts of speech.

In a pensive, dreamy silence
I am very often found,
As if listening to a rainbow
Or looking at a sound.
'Tis then I see your beauty
Reflected through my tears,
And I feel that I have loved you
A thousand thousand years.

My professional income for these two years, not counting insolvent fees, amounted to between thirty-five and fifty dollars per annum. Having no means with which to establish myself elsewhere and wait for a clientage, I determined to suspend practice and engage in a more lucrative department of labor until I

could accumulate a small capital. I sought and obtained employment as book-keeper in the State railroad office at Atlanta. In this situation I remained for three years, my compensation ranging from $40 to $66 per month. In the fourth year I was transferred to Milledgeville, then the capital of the State, being appointed one of the Governor's secretaries, at a salary of $1,200. A new incumbent of the executive chair was inaugurated in November, 1851, and both my health and my politics needing repairs, I returned to private life. I had saved enough from my earnings to supply me with the skeleton of a library, and to support me some months as a candidate for practice. In March, 1852, being then nearly twenty-five years of age, I opened an office in Atlanta, and my thoughts and dreams were again of law and of nothing else. The phantom lady haunted me as before, and seemed as beautiful as ever. Indeed, though I had been cool, I had been constant in my devotion to her through the four years I was out of her service. Clients gradually ventured within my chambers, and I soon had a moderate prosperity, due chiefly to acquaintance made in railroad circles during my three years' service as a railway clerk. In 1853 I was elected to the office of Solicitor-General for my judicial circuit, which embraced eight counties. My term of service was four years, in the last of which happened the crowning success of my whole life, — I was married. Until 1861 I continued the practice in Atlanta. The first battle of Manassas, *alias* Bull Run, occurred while I was in a camp of instruction, endeavoring to acquire some skill in the noble art of homicide. By nature I am pacific. The military spirit has but a feeble development in my constitution. Nevertheless, I tried the fortunes of a private soldier for a short time in behalf of the Southern Confederacy. I was discharged on account of ill-health, after a few months' service in Western Virginia, without having shed any one's blood or lost any blood of my own. The state of my martial emotions was somewhat peculiar: I loved my friends, but did not hate my enemies. Without getting "fighting mad," I went out to commit my share of slaughter, being actuated by a solemn sense of duty, unmixed with spite or ill-will. When I consider how destructive I might

have been had my health supported my prowess, I am disposed to congratulate "gentlemen on the other side" upon my forced retirement from the ranks at an early period of the contest. To the best of my remembrance, I was very reluctant but very determined to fight. However, all my military acts were utterly null and void. After my discharge from the army, I served the Confederacy in much of its legal business at and around Atlanta. Occasionally I took part, also, in short terms of camp duty as a member of the militia. In 1864, about the time General Sherman left Atlanta on his march to the sea, I was appointed to the office of Supreme Court Reporter. After reporting two volumes, the 34th and 35th Ga., I resigned that office. This was in the spring of 1867. From that time till I was appointed to the Supreme Bench in 1875, I practiced law continuously in Atlanta.

Such education as I received in my boyhood was acquired at the village academy of my native county, an institution of meagre resources and a limited range of instruction. Although in the course of a somewhat studious lifetime I have added considerably to my early stock, the plain truth is that while not illiterate, I am destitute of real learning, lay or legal. My highest aspiration, so far as this life is concerned, is to do good judicial work. Service is better than salary, duty more inspiring than reward. My devotion to law is the spiritual consecration of a loving disciple, a devout minister. L. E. Bleckley.

TRUTH AT THE BAR.

An Address delivered by Judge Bleckley at the third annual meeting of the Georgia Bar Association, Atlanta, August 27th, 1886.

Reprinted from the Annual Report.

TRUTH AT THE BAR.

Law is the scripture of Justice, the gospel of Right, and Truth is the minister at its altars. Error is a pretender to holy orders, a wolf in sheep's clothing, always striving to usurp the sacred office, or to share in the exercise of its functions. To exclude Error from the sanctuary, and to admit and keep Truth within it, are objects of sedulous endeavor in every system of enlightened jurisprudence.

Laying aside metaphor, neither truth nor error can be effective in judicial proceedings except as premises or as conclusions. Premises are of fact or of law; and conclusions are also of fact, or of law, or of both together. Thus, truth is truth of fact, truth of law, and truth of logic. Error is deviation from truth in premises or in conclusion, and, like truth, is of fact, of law, or of logic. The modes of deviation are by suggestion of the erroneous, or by suppression of the true. Deviation by suggestion is falsehood, fiction or mistake. Falsehood is concealed fabrication; fiction is admitted fabrication; and mistake is ignorant fabrication. Deviation by suppression is failure to suggest a part of truth necessary to exclude error or to make truth complete. Suppression is either warranted or unwarranted; warranted where there is no engagement, express or implied, not to suppress; unwarranted where there is such engagement. Warranted suppression is consistent with veracity; unwarranted suppression involves deception, and is therefore falsehood.

Though speech and writing are the ordinary *media* of suggestion, any voluntary sign by which thought or feeling is intentionally communicated from one mind to another is, for the occasion, a sufficient medium. False suggestions may consequently be made by acts as well as by words, or even by silence where silence is rightly understood to affirm or deny. That "silence gives consent" is attested by a familiar proverb of high antiquity.

From truth in the sense of veracity, there can be no blameless deviation; but from truth in the broader sense of antithesis to error (the sense in which the term is, for the most part, used in this address,) all forms of deviation are without breach of veracity except two. These two are concealed fabrication, and unwarranted suppression, each of which is falsehood as well as error.

False suggestions of fact can have no more toleration at the Bar than elsewhere. That they are made at the Bar is no excuse for them, but rather the contrary, for there, if anywhere, truth of fact is essential. And truth of law is not less essential or less sacred. To fabricate law and utter it as genuine, knowing it to be forged, is quite as reprehensible as to invent fact. An example under this head may be given without exposing any one but myself. The statute required that testimony taken by interrogatories should be sealed up and directed to the magistrate who issued the commission. Testimony thus taken, and borne by a messenger, was presented by him in open Court to be received, and was objected to because, though sealed up, no direction was written on the package. I parried the objection with proof by the messenger that the commissioners *directed him* to deliver the package to the proper magistrate. This evasion of the statute served its purpose, and as I knew that it was, on my part, a false suggestion of law, it was a fabrication of law. This occurred in the infancy of my professional life, and I claim that it is the sole instance of such dereliction with which I am chargeable, but whether this claim is not another fabrication may, perhaps, fall under the maxim, *"Falsus in uno, falsus in omnibus."* If this severe maxim will not allow me to be believed at all, then nobody can believe, upon my statement, that I ever fabricated anything, and certainly I shall introduce no other witness to prove that I did.

False logic is on a par, in every respect, with false fact or law. Conclusions, whether from premises of fact or premises of law, or from both combined, if suggested under a known but concealed fallacy or sophism, are as bad fabrications as if the premises were also invented. What profits it that premises are

true if by deceitful manipulation they are made to pull after them false conclusions? The only possible utility of true premises is to serve as data for true conclusions. To wrest them to an opposite purpose is not only to thwart but pervert them. Lies of fact, lies of law and lies of logic have the same parentage—they are all born of insincerity, and are members of the same wicked family. Dialectic breaches of veracity are doubtless very rare, for, though sophistry is common enough, the sophistical reasoner, heated by zeal, imposes on himself so easily that he is under little temptation to practice imposition upon others. Like Mahomet, he begins by converting his own household. By nothing are we so sure of being deluded as by subtle and ingenious arguments discovered by ourselves. All the serpents outside are not half so dangerous as the one that slips about in our own garden. Emotional sophistry, especially, is the bosom friend of error; and when the emotion is false as well as the logic it uses, the combination is abominable. Passion not felt but feigned, vehemence affected in order to warm with fox-fire, and other prevarications by pathetic display, are lies of the soul, not merely of the mind and body. They are not less, but more unjustifiable than cold intellectual falsehood. To deceive the head through the heart is worse than deceiving it through the brain alone. Nor is this condemnation any disparagement of eloquence as a virtuous and useful instrumentality in producing conviction and vindicating truth. It is rather a protest against spurious imitation — against all fustian declamation from which sincerity is absent. Though like counterfeit paper money, it may pass by deceiving, it has no virtue of the genuine article except appearance. He who does not suffer the glorious agony of the orator, but assumes the character and plays it for victory, profanes the affections to seduce the understanding. When we exhibit signs of emotion, we necessarily profess that measure of conviction (not representative but personal and individual conviction,) which nature has made the foundation of such emotion; and where the conviction is wanting, we misrepresent truth of thought as well as truth of feeling.

The Bar is no place for sham or dissimulation, whether in speech or action. In legal attack and defense, there is a field for strategy, but none for stratagem. Litigation, though contest, is not war but peace; its rights are pacific, and so are its methods and morality. It accepts the service of art in the sense of skill and in the sense of address, but not in the low sense of artifice, trick, trap, subterfuge or chicanery. If these uworthy forms of art ever appear in practice, it can only be because the principle which excludes them is unknown, misapplied through mistake, or willfully violated.

Thus much on falsehood by suggestion, or concealed fabrication. The remaining form of falsehood, that of unwarranted suppression, cannot occur unless veracity becomes engaged to make the disclosure in question. Mere knowledge, and silently holding truth under cover, will pledge veracity to nothing; but a pledge will arise out of any promise, sign or circumstance from which a right in another person to have the disclosure made is fairly deducible. Against either idle, or aggressive curiosity, silence may hold out to the end, and suffer the inquisitive mind to fill itself with as many errors of inference as it pleases to embrace. The responsibility for all such is with itself. We are not obliged to part with truth as a gratuity; but we are obliged to pay it out when we owe it as a debt, no matter how hurtful the disclosure may be to our interest. Truth as a whole, being divisible, we may divide it, utter some and keep back the rest, but we are not at liberty to cut it into slices so minute that what we put forth will mislead or deceive. We are bound to give our communications bulk enough to make them rightly understood, when fairly interpreted, so far as they go. Like some drugs, truth is often poisonous in small doses. We must take care to issue it in doses large enough, if not to medicate, at least to be harmless, and, in paying all of our debts, to over-pay rather than fall short.

Warranted suppression begins where unwarranted suppression ends, and covers the remaining territory of knowledge. I will give two examples, the first between counsel and Court, the second between counsel and client. My client's rights depended

upon a foreign testament never recorded. Before bringing the suit, I had access to a letter written by his adversary, in which it was stated that the *lex domicillii* of the testator did not require testaments to be recorded. In setting out my client's title, I alleged this supposed rule of law in my pleadings, and it was admitted in the adversary's answer. Before the trial, however, I ascertained the law to be otherwise, and that an unrecorded testament would not verify title. Nevertheless, at the trial I said nothing of this discovery, but took the benefit of the erroneous allegation and admission, and recovered. As there was no point made to the Court on the record of the paper, I was under no duty to mention it; and perhaps if any point had been made, I might have had the requisite recording attended to in time to serve the exigencies of my case. To pass to the other instance. I had one of those charming clients, a woman. She was a widow, and liked to talk about her case. When she had exhausted the facts, she would take up the law and discuss it with bewitching simplicity. Neither she nor I knew the law of her case, but in one of her artless conversations she accidentally told me what it was, although she did not then consciously know it herself, and never did. The case was gained upon her disclosure of the law, and she supposed the success was mine, but it was really her own. I was too modest to tell her that she was her own lawyer, and that I was a mere interpreter of her intuitive legal wisdom.

No doubt there is much truth, a vast amount of it, in the green room, or behind the scenery, that never appears on the legal stage, and of which Courts, adversaries and the public, and very often clients, are allowed to get no glimpse. What fifty thousand lawyers know, over and above what they tell, would fatigue a hundred thousand poets to imagine. They are supposed by the non-initiated to have secrets, and to keep them, and to use them for the benefit of their clients, and this is true; but the imputation upon their candor which frequently goes along with this supposition is far from being well founded. Those who complain of the want of candor at the Bar should consider how candor fares elsewhere. Who exposes everything? who,

at least, that wears clothes? "They made themselves aprons of fig leaves." "I was afraid because I was naked, and I hid myself." Who does not hide? Who conceals nothing? Who does not wear an apron over his mind, his heart, his soul? Concealment is a part of the daily discipline of a clothes-wearing people, and yet clothes are to be worn. "The Lord God made coats of skins and clothed them." And events, transactions, are to be concealed as well as nakedness: "See thou tell no man." "See that no man know it." Every mind has and must have its secrets, though well aware that the truth which is concealed, and kept concealed, would, if known, powerfully influence other minds in thought, feeling and conduct. It is precisely because of such influence, and to prevent it from operating, that secrecy is universally practiced. If all truth were put in circulation, none of it hoarded and suffered to lie idle, society would be disrupted in a month — perhaps in a week. It would be more terrible than "an army with banners." Much of the perplexity of social life results from our having to discover expedients for suppressing truth without directly suggesting falsehood. The problem, how not to tell the truth without telling a lie, is suggested for solution over and over again, not only to lawyers, but to physicians, bankers, brokers, merchants, mechanics, farmers, even perhaps to clergymen, and it, may be, to the very ladies. Nothing would simplify intercourse for business, pleasure, civilty, ceremony, any purpose, as much as to give truth the right of way through all human affairs. Those of us who dislike the trouble of suppressing, and are little skilled in the arts of evasion, could heartily wish this were practicable; but it is not; it would be wiser to grant free passage to a cyclone. In the use of truth, the lawyer is eclectic — say, if you please, he is economical; but so is everybody else, and rightly so. A discreet silence is as much, and perhaps as often, the dictate of virtue as of interest or shame. A man who does not know how to keep truth in the house, knows still less how to put it out of doors. It would be a much safer practice to disclose nothing than to disclose everything. Universal silence would do less harm than universal and unlimited communication. The world would be happier dumb than with no power to hush.

"The day is no better bestowed than the night,
And darkness is precious, as well as the light."

Having classified truth and error in general, then considered falsehood in both its forms, and then glanced at warranted suppression, that is, suppression of truth without the violation of truth, I come now to the question of suggesting truth without the violation of morality. It is clear that the use of falsehood is not allowable in any case, on either side. Is truth, equally with falsehood, to be excluded from one side, or may it be suggested on both sides, and urged for what it is worth in the interest of one party as well as the other? To answer this question on principle, involves some closeness and thoroughness of examination.

The problem for judicial mind as a whole, whether all on the bench or some in the jury box, is to pass from ignorance to justice. Every Court, (by which I mean the aggregate of the deciding power,) though it may know beforehand the general law and facts common alike to all cases, or to all of any given class, is ignorant of the special law and facts involved in any particular case. While this ignorance continues justice is not discernable, and hence there is no way to pass immediately from ignorance to justice unless by mere chance, by casting lots or otherwise appealing to fortune. To pass intelligently, ignorance must be succeeded by knowledge, the steps being, first, from ignorance to knowledge of truth, and, secondly, from knowledge of truth to justice. The means of making this movement is procedure; and so, with ignorance at one extreme and justice at the other, the whole line, filled up, is as follows: ignorance, procedure, knowledge, justice. Knowledge being indispensable to justice, and procedure indispensable to knowledge, procedure is the portal, the only portal, to justice. Without it a Court could not distinguish justice from injustice — could not recognize or identify justice, so as to determine either its presence or its absence. No matter, therefore, on which side of a case justice may be, or whether partly on one side and partly on the other, procedure is something in which both parties have an interest,

to say nothing of the interest in it of the Court or of the public as the only means of carrying on judicial work and making Courts available. This interest of the parties is so important that every rule of procedure, unless purely discretionary with the Court (as some of them are), is always attended with a corresponding right of procedure, vested in one or both of the parties, each party having the rights appropriate to his position in the case as plaintiff or defendant. The result is, that incident to these rights there is a body of remedial justice — justice of procedure, which is altogether apart from and quite independent of justice of substance, or the ultimate justice of the case. Relatively to procedure, any and every case is just on both sides, for each side has rights of procedure, and it is just that these rights should be allowed and administered according to the rules which grant and govern them. It is through rights of procedure that rights of substance are judicially ascertained; through justice of procedure justice of substance is administered. Procedure necessary to correct decision has several elements, but the one for which the others exist, and in which they culminate, is verification, or the establishment, by appropriate evidence, of the facts and law on which, and according to which, final decision is to be made. Verification converts claim, or unverified case into verified case; and this latter alone is decided. No unverified case is ever adjudged. When the ultimate decision is to be made, the case as verified is treated as the full, complete and only real case, and all unverified claim on either side is ignored. Argument is one of the instrumentalities of verification, whether made from time to time as the evidence of fact is being adduced, upon points for or against its admission, or after the evidence of fact is all in, upon its effect, or upon the law applicable to it, or, where the facts are admitted, upon the law alone. It contributes to the verification of law by citing and quoting books and other memorials of authority as evidence of it, and by general reasoning. It marshals law and facts together, points out the presence or absence of premises, urges their sufficiency or insufficiency, and traces them to their conclusions. When the requisite premises are in the verified case the conclus-

ions are in it also, but the connection is often obscure and needs to be rendered obvious to the deciding power, whether judge or jury.

Thus, it is apparent that procedure is the door between claim and case, that is, between unverified case and verified case. The judge is the door-keeper, and each party may challenge everything presented for admission by anybody but himself. This is a right granted by the maker and owner of the door. Even the jurisdiction of the Court to entertain the case at all may be challenged; or the composition of the jury, or the mode of its organization, or the pleadings of the opposite party, in whole or in part, or the sufficiency of process and service, or the competency of witnesses, or of any testimony offered. All this, and much more, without any assignable limit, may be challenged in any and every case. The only moral conditions necessarily involved are that any challenge made should be made in good faith, and for the purpose of raising a real, not a frivolous or mere sham question, and that the motive of challenge should be, not to trifle, vex or delay, but to conduct real business with business directness and dispatch. To filibuster in Court is not less immoral than to filibuster in Congress or the Legislature.

Inasmuch as verification must take place or no decision could be made, there must be a verifying force lodged somewhere; either with the Court, in which event it would merge in the deciding force, and make one force with two functions; or away from the Court, in which event it would have to be committed to the parties, one or both, or to some outside custody. Supposing it to be placed with the Court, would it be to the interest of justice that the Court should verify but one side of the case? Would it not be desirable to discover all the truth, whether of fact, or of law, on both sides? And, in searching for evidence by which to establish truth of fact or truth of law, would not the Court work with equal diligence, and with its utmost diligence, to protect the rights of both parties, trusting to this very process for reaching the proper knowledge on which to base the ultimate decision? On the supposition of the verifying force being in the hands of strangers — that is, of persons other than the

parties, would not the Court desire, and the interest of justice demand, that the custodians of the force should use it to bring out and establish the whole truth on both sides? For obvious reasons, the burden of collecting the raw materials of fact and law, and of verifying cases, is not put upon the Courts; and for sufficient reasons, whether obvious or not, strangers are not preferred by the law to the parties for this purpose. Suppose, then, the verifying force to be lodged with one of the parties, is its use by one better for the interest of justice than its use by both? Will one of them better present the whole case? or is it less important that the Court should look to the truth on both sides when the parties are in charge of the verifying machinery, than if the Court itself or a stranger were in charge of it?

On the contrary, every one who has presided on the bench, and many, if not all, who have served as jurors in litigated cases, know well how vital it is to "hear from the other side." If only one party is to be heard in verification, which shall it be, the one that has justice or the one that lacks it? And until verification is complete, how is it to be known which has it and which lacks it? Is the lost to be found before search, and the search made after the finding? Unless the justice of the given case were already known, the verifying force could not be lodged solely along with it or solely away from it; and were it already known, there would be no need for verification at all. On principle, then, the law wisely divides the verifying force into two opposite forces, and commits one of them to each party. The law does this knowing that parties are selfish, and that even in a contest about justice, their activity will not be for the sake of justice, but for the sake of interest — the interest they have in justice as they understand it, or claim it to be. The scheme of the law for discovering what it really is, is a combination of three forces: two verifying and one deciding; two antagonistic and one neutral; two selfish and one disinterested. The parties work adversely for a prize; the Court works indifferently between them for a principle — the principle according to which the prize is to be awarded. The Court finds the principle, if at all, by witnessing, guiding and governing the contention, and by studying its

verified results. In such a struggle, it is helpful to the Court and advantageous to justice that all the strength and all the weakness of both sides should be made manifest. Each party can well be trusted to show his own strength, but not his own weakness; his adversary will expose that much better. To get the full benefit of this principle of human nature, the range of verification permitted by the law is as follows: Either party may verify all he can, and hinder his adversary as much as he can from verifying anything; but he can neither verify nor hinder by violating justice of procedure, nor by the use of falsehood in either of its forms — that is, neither by concealed fabrication, nor unwarranted suppression. He must act in good faith to the law, to the Court and to the adversary, and commit no breach of veracity.

Some meritorious cases, indeed many, are lost in passing through the justice of procedure; but they are all justly lost, provided the rules of procedure have been correctly applied to them. That a just debt is unrecognized, a just title defeated, or a guilty man acquitted, is no evidence that justice has not been done by the Court or the jury. It may be the highest evidence that justice has been done, for it is perfectly just not to enforce payment of a just debt, not to uphold a just title, not to convict a guilty man, if the debt, or the title, or the guilt be not verified. It is unjust to do justice by doing injustice. A just discovery cannot be made by an unjust search. An end not attainable by just means is not attainable at all; ethically, it is an impossible end. Courts cannot do justice of substance except by and through justice of procedure. They must not reach justice of substance by violating justice of procedure. They must realize both, if they can, but if either has to fail, it must be justice of substance, for without justice of procedure Courts cannot know, nor be made to know, what justice of substance is, or which party ought to prevail. As well might a man put out his eyes in order to see better, as for a Court to stray from justice of procedure in order to administer justice of substance.

Where there is a case pending in any Court the justice of procedure is absolutely certain, not for one party but for both.

The possibility of mistake in administration does not impair that certainty. To the extent of the truth directly involved in procedure, there is some truth indubitably on either side, and would be were there no formal issue on the justice of substance made up, or intended to be made up. Though it were admitted that a party is entitled to a judgment in his favor, he has no right to have it without bringing suit to obtain it, nor without that measure of verification which the rules of procedure prescribe. The admission of his right to it might serve his purpose for verification, but not without using it to make a verified case. No Court will or ought to render a judgment on any unverified case, though the degree of verification may be as slight, and the means of it as various, as the law may please to ordain. There can be no doubt of the morality of obstructing a party in doing by law what he has no right to do. It follows that at least some of the truth (and if some, why not all?) may be suggested in Court in behalf of either party. There is no better legal right to prevail on a just cause of action without verifying it than on an unjust cause of action; and without a legal right to prevail there is no right at all. A Court has never in this world knowingly rendered a judgment on any right except a legal right, and never will. In so far as moral rights and legal rights are the same, morality is law; and, because it is law, not because it is morality, Courts administer it. For all mere moral rights which have never been converted into legal rights, the only tribunal on this earth is conscience, reinforced in some degree by the retributions, physical and moral, pointed to by the boys' maxim that "cheating luck never thrives." Where the law does not adopt morality it takes care not to raise any direct conflict with it. There is no law obliging anybody to worship idols, to take the Divine name in vain, to violate the Sabbath, to kill, to steal, to bear false witness; nor is there any law forbidding the payment of honest debts, or the practice of charity. Were there any such, no person, whether as party or counsel, could aid in enforcing it. But the law is not immoral because it does not prohibit the worship of idols, and were a person indicted in our Courts for practicing such worship, it would not be immoral to defend him,

there being no law to punish. In like manner, were there no law against stealing except the moral law, human Courts could not inflict punishment, and it would not be wrong to defend. And the same rule would hold in regard to any other part of the Decalogue. Direct conflict with moral law being excluded from human law, right and wrong in Court are determined by the legal, not by the moral element, and the Court, the parties and the counsel must conform to that understanding. This does not cut off or impair the moral remedy or any voluntary action conforming to it. The law does not forbid or hinder the performance of mere moral duty; it simply declines, in some cases, to enforce it as a legal duty. The distinction is world-wide between forbidding a duty and not furnishing a remedy to *compel* its performance. The remedy of nature, or of providence, so far as this world is concerned, for inducing compliance with moral obligations, is not compulsory but voluntary. The conscience is not forced, but left free to do or not. Just so does the law treat mere moral duties.

To realize the exact relation of counsel to the truth and justice of a litigated case, we are to remember that the law can make no offer of justice to any suitor except upon terms of procedure; and it can make no offer at all of pure, absolute, infallible justice, but only of such practical justice as is attainable by means of procedure. It allows each litigant to have his own counsel, but cannot allow the same counsel to appear for both parties. Where there is real forensic contest, it would be as inconsistent for one lawyer to manage both sides as for one general to command both armies in a battle. No lawyer is ever employed for a whole case; he is employed for a part of it only, to-wit, his client's side; and thus, he neither represents nor is permitted to represent the whole truth or the whole justice of the case, but so much only as will make for his client's interest in that controversy. His client is in Court for a selfish purpose, that is, to serve his interest, and has employed a lawyer at his own expense to help him, and for nothing else. The lawyer's attitude towards any truth and justice which are adverse to his client's interest is hostile so long as they are unverified, and after

their verification it is one of vigilant police, lest by combining with error, or otherwise, they should damage the truth and justice of which he has the care. So they do as little hurt as possible to his client's interest, he has no concern with them — no more than if he were not employed in the case. He can see them perish without compunction, for they are not in his keeping; they are not his wards. A mere bystander may interfere for their rescue or preservation sooner than he, for the most he can do for his client's adversary is to be neutral; he dare not render him active service.

The law does not undertake to recognize, as truth and justice of substance, anything unless it is made to appear with due legal certainty. There is no function of counsel more important than that of seeing to the mode and measure of proof. So long as truth and justice are open to legal doubt, though they may be certain to the individual mind of the counsel, he may urge their want of standing in Court; and he has no business with their standing outside, not even in his own mind. All the weak places in hostile evidence should be diligently searched for, found out and exposed. A lawyer who lacks the critical faculty, or the industry, energy or coolness needful to make it efficient, will often mistake error for truth. A large part of professional work is criticism. But mere quibble or cavil is beneath contempt, except when due to that rare order of mind which thinks a pun is a point for solemn adjudication by the Supreme Court.

The truth or the justice of a case, as a whole, is not upon the conscience of counsel for either of the parties. Such a burden would be inconsistent with the very work appointed for him to do. To assign him to one of the parties exclusively unfits him for taking upon him any sort of a burden, moral or legal, co-extensive with the whole case. If such were his function he ought to appear as *amicus curiae* in behalf of the disinterested force, and form no alliance with the interested force.

As practitioner at the Bar, counsel is a part of the system of remedy, no part of the system of substantial rights. His first concern is with the system to which he belongs, and through which alone he is related to any right or justice outside of it.

He is part of a machine, helping to keep the other parts in order and to operate the whole. What would impair the machine he cannot do; neither can he do *anything* except with the machine. The necessity of procedure, and that alone, accounts for and justifies his existence. Were Courts inspired, or did they know intuitively what they learn through procedure, he would be relegated to his law-office, there to be consulted and give advice on rights of substance and the modes of their acquisition, preservation and transfer. His professional life would be retired and silent.

If the relation between justice of procedure and justice of substance be as defined in the foregoing paragraphs of this address, the overwhelming importance of procedure ought to be realized, both in the professional mind and the public mind. To secure a wise and judicious system, the one best adapted to work out justice of substance with certainty, celerity and cheapness, ought to be an object of anxious endeavor with the law-making, the law-administering and the law-abiding elements of society. Only the law-breaking element can possibly be benefited by a bad system, or one that results in temporary failure of ultimate justice by delay, or its permanent failure by erroneous decision.

It is doubtful whether lawyers, in general, estimate justice of procedure at its true value; and it is certain that the public, in general, do not estimate it at all; they do not think of it; they rarely hear it mentioned; they scarcely know of its existence. When they speak of justice, they mean justice of substance, and that alone. With their attention concentrated exclusively upon it, they fail to remember, perhaps they do not consciously know, that there is a justice of justice. When justice of substance is wounded or slain, they think injustice must have done the mischief; and did you tell them that it was done justly — that injustice had no part in it, they would think you mocked them with paradox. They know that some forms of good may be defeated by other forms of good, for this is constantly occurring throughout all human experience. No day passes without some ends, good and proper in themselves, having to be sacrificed, not because they are out of

the reach of means, but because they cannot be accomplished by any *good* means at our command; and in the pursuit of all ends we are confined by God's law as well as by man's law to good means. We cannot do wrong to serve right; and the doing of one right thing that we must do is often the only obstacle to doing another right thing that we would do. All this is plain to all people, but that it applies to justice as well as to other good, is what they fail to realize; and yet its application to justice is no less certain and no less obvious. Justice of procedure consists in abiding by and faithfully administering the rules of procedure, whatever they may be. This a Court *must* do, and what it *would* do is to ascertain and administer justice of substance by this means. Here, then, is a must do and a would do; and the doing of the must may, in certain cases, be the very thing, and the only thing, that hinders the doing of the would. Hence, justice done in adhering to appointed means may defeat the very end and the only end which the means were intended to accomplish; and so justice, instead of being the saviour, may be the executioner of justice. It is the business of the Legislature to appoint means — that is, to mould procedure, and prescribe its rules. And in doing so, if not wisely done, the means will not only fail of their end in numerous instances, but be themselves the cause of the failure. And this, at present, is the condition, in some respects, of procedure in Georgia. Let procedure be put upon a basis of principle, and modern common sense, not the common sense that saw truth as it was before the time of railroads, telegraphs and telephones, but the common sense of to-day—like that of merchants, bankers, common carriers, even of the newsboys — that sees truth as it is, heated by steam and hurried by electricity.

There is a clamor abroad for justice, for justice of substance, and legislators, the Courts, the Bar and the people may prepare to administer it on a system of procedure adequate to modern demand, or else to witness, in stolid imbecility, attempts, more and more numerous, more and more desperate, to clutch it by the rude hand of violence. Of what avail is truth at the Bar when truth itself is obliged, by a false or obsolete system of procedure, to delay or defeat substantial justice?

LAW AS A RULE OF FEELING.

A paper read by Judge Bleckley at the sixth annual meeting of the Georgia Bar Association, Savannah, May 9th, 1889.

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LAW AS A RULE OF FEELING.

Positive law, as distinguished from natural, is the mandate of one will to another will. It is thus a relation between two wills—a superior and inferior, the one foreign, the other domestic. Every scheme of positive law has in it two elements — precepts and sanctions. The preceptive element points out what is required, and exacts compliance with the requirement; the sanction element declares the consequence of non-compliance. This consequence, in civil law, is usually some coercive measure to enforce, either compliance, specifically, or compensation in lieu thereof; in criminal law it is the infliction of punishment. The moral, and sometimes human law, extends its sanction so as to declare also the consequence of compliance with the requirement, which consequence is reward. By this duplicate sanction is established what is called a system of rewards and punishments—reward for obedience to law, punishment for disobedience.

Next we notice government — using the term not as comprehending the law-making power, but only the agencies of administering law.

The functions of government, in order to cover the whole field of positive law, must include two sets of administrative acts; one set applying the precepts, the other the sanctions of the legal system. To apply precepts to conduct, is possible only while the conduct is in progress. After an act or omission is past, no law can be applied to it. You can only deal with consequences, and these can in no way reach back to the vanished act or omission itself. It follows that the administrator of positive law in its precepts is not the magistrate, but the party to whom the law is addressed. The magistrate administers only the sanctions of the law. There can be no breach or violation of law otherwise than by maladministration. A law which cannot be administered in its precepts by the party, cannot justly be administered in its sanctions by the magistrate; in other words, it is tyrannical — an unjust law.

What the domestic will cannot do or cause to be done, the foreign will cannot visit with penalties for leaving undone. Whatever is not subject to the domestic will is not subject to the foreign will in the exercise of authority over the domestic will. In so far as we are not subject to our own will, we are not subject to the positive law of another will. What is not in the sphere of self-government is not in the sphere of positive government at all. In its last analysis, therefore, all government is based on the power and duty of self-government. Relatively to law, all personal merit is in faithful, and all personal demerit is in unfaithful, self-government. Hence, in philosophic politics there is room for an order of nobility — the order of virtue. Men who govern themselves correctly are noble in the true sense.

We know that the affections are under natural law. Let us see how they stand related to positive law. It is plain that they could be put under precept, if precept were separated from sanction. It would do no violence to their nature to ply them with precepts, counsel, persuasion, entreaty or exhortation; but to include them in the double sanction of rewards and punishments looks at first view like resort to bribery and terror. Coercive machinery applied to love, gratitude, magnanimity, charity, is suggestive of a contradiction like that between force and freedom. My actions may be regulated by your will, but my affections seem subject to no will whatsoever, not even to my own. It may be thought, I cannot love whom you will, nor whom I will, but only those to whom my affections spontaneously incline. True, my will, and even yours, may influence in some degree my inclination, but not (it may be contended) by giving it a law. Legislating for it might probably have a contrary effect to that desired. To try is certainly within my power, but not unfrequently the more we try the less we succeed; the shadow of the will seems to hinder the sunshine of affection from bursting out. There seems to be a principle of spontaneity in the recesses of our emotional nature, delicate and sensitive, easily wounded, and apt to resent any encroachment of the will (foreign or domestic) as obtrusive and impertinent. Offer of reward and threat of punishment seem to put love, charity, gratitude, etc., under two

tyrants, hope and fear. Can this be done without subjugating them, —without depriving them of a part of their essential nature? Do you not destroy them in proportion as you succeed in tempting them by reward or coercing them by penalty? In so far as they are accessible to the motives of pay and punishment, are they not something else rather than themselves? Is love, complicated with hope and fear as conditions of its existence, love at all?

Though it is obvious that our emotions are less amenable to law than our faculties of action, for the reason that they are not so immediately and directly related to the will; yet that they are related to the will in a mediate and indirect way, and therefore amenable to law in some degree, is beyond all doubt. The difference is that the will can move upon the faculties of action in straight lines, whereas it can approach the emotions by curves only. And it may be observed also, that where the office of the will is not to prompt or excite the emotions, but to restrain them or keep them from rising, the volitional influence is almost as direct as it is over conduct in general, especially where there is time for deliberation. A law not to love or hate, in a degree beyond the average degree of these passions, would be more easily complied with than one to love or hate affirmatively, in a degree to which we are not inclined by nature. Still, by the use of means and by a process of stimulation and cultivation, we have the power to comply with any reasonable law exacting the exercise of love, charity and all the elevated emotions, and therefore any such a law, whether human or divine, is not, in itself, tyrannical or unjust.

St. Francis de Sales, when asked how to love, said the best and easiest way to love was to love. He added that we learn to speak by speaking, to study by studying, to run by running, to work by working, and just so we learn to love by loving. In the exercise of all the virtues, there should be as much concentration of the mind on the object and as little self-regard as possible. Take the case of charity. Active charity is a sort of commercial transaction, with the commercial motive absent. We give something for nothing, and yet we receive as well as give.

But the moment we allow the value received, or to be received, to rise into distinct consciousness and become a motive for our action, the moral nature of the action changes; it becomes selfish or partly selfish, instead of being, as without this it would have been, wholly benevolent. Indeed, one of the conditions to exalted virtue of any kind is to keep the self-interest that attends upon virtue out of consciousness. Self-consciousness is the Aaron's rod that swallows up all the not-self that comes in its way. For this reason, amongst others, it has been made a question whether certain organized charity-work is to be encouraged, or even tolerated. I allude to that form of organization which consists of a president, a secretary, a committee, a hall and a ball, with indefinite refreshments.

In the study of my subject, I have been surprised to find so little law on love before marriage. In none of the books do I see any command to love the young ladies or the young gentlemen of any age or generation. This is a sort of love that does not wait for orders. There is no conscription; everybody volunteers. Still, there is some law, for Cupid has a court and suits and suitors; this implies law and lawyers; but I have never practiced at this bar, except in one very difficult case, in which I was plaintiff as well as counsel. The law of the land leaves love affairs to proceed somewhat at haphazzard until they are about to be locked in wedlock. Then it helps the parties along by granting a license, and the church also interposes by sending a clergyman to assist in the final ceremony.

This stage being passed, love before the fact changes into love after the fact, and the imperative "Thou shalt love" is in full force.

After Judge Bleckley had concluded the reading of the foregoing, he spoke orally as follows:

I have of deliberate purpose afforded you a specimen of a perfectly useless piece of work, desiring to call your attention to one quality which commends it, and that is brevity. Useless things are not to be put out of the world. We have in nature a perpetual example for mingling the useless with the useful, and

no doubt there is a certain utility in the useless; but what I want to impress upon you and myself is, that life is too short within which to do too much useless labor. There is certainly too much of it done. Waste work comprehends at least one-half of all work. My opinion is that two-thirds of the labor of lawyers and courts may be said to be wasted absolutely. Let us endeavor to reduce the useless work of the profession and of the bench to the minimum.

I am gratified to see that uselessness has lately been introduced by the establishment of a periodical called "The Green Bag," into the literature of the law. I think there is a place for it. The title page to that periodical says it is a useless but entertaining magazine. This describes it, and one characteristic, I notice, belonging to most of its articles is, they are brief. If they were extended they would be useless, but not entertaining; they would be very tiresome.

Gentlemen, it is a mistake to throw legal work into the hopper pell-mell. It is a mistake to do it, no matter what court you present yourselves in. A great part of your labor should be in keeping out work when your causes come to be tried, whether in a lower or a higher court. A great part of the most useful work you can do is to sift out all the irrevelant and all the unnecessary material that will collect about a lawsuit. When you go into court your standards are all abstract. Law is abstraction; it is generality; it is a system of general rules for cases of each class. Your standards in any court, whether you are before the court alone, or before a court and jury, are all abstract. Bring in enough of the concrete case (all of it that touches the merits) to show how to apply the abstract rules of law to it. Then you have done your best. Let the concrete be so reduced in mass that you can readily apply the abstract to it. Avoid any hurtful condensation of the concrete, and hurtful expansion of it. One of the best methods of relieving the Supreme Court of the United States, intermediate courts, and all courts, would be for lawyers to do most of their work before they go to court; for them to eliminate from their records and the material of their cases all the irrelevant, all that can be spared without hazarding or impairing the merits.

If the profession would do their best to condense their work and economize the labor of the courts, the courts could do the judicial work. There is bench force enough in this country to do its legal business, if the lawyers would do their part in reducing judicial labor. But how is this reform to be accomplished? Courts are powerless to reform anything without the co-operation of the bar. The whole system of administering justice is a co-operative system.

The bar and the bench must harmonize and work together. I would respectfully submit that lawyers have not understood the art of condensing work, condensing it sufficiently for courts to deal with it. The professional mind should seize upon this idea. Every time a line is written, ask yourselves if it is necessary to trouble the court with it. Ask if this can be dispensed with. Can I throw it away and not hurt my case? It will require labor. Everything valuable requires labor. Nothing is worth anything which does not cost work save what nature produces spontaneously.

I submit these considerations to you, and hope you will reflect upon them. I want to advocate no extreme policy, but I do think that a man who is ashamed to write a long letter unnecessarily on business, ought to be unwilling to throw away his labor or that of anybody else in court. There is virtue in brevity of work. No business man writes a long business letter if he can write a brief one. Good business work must be condensed and abbreviated, just as good business communications are. If you will realize this and act upon it, you will profit by it yourselves, and I know it will be invaluable to others who have to co-operate with you in the outcome of your professional business.

EMOTIONAL JUSTICE.

An address delivered by Judge Bleckley at the ninth annual meeting of the Georgia Bar Association, Macon, June 1st, 1892.

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EMOTIONAL JUSTICE.

My subject is so weighty and important that I could rely upon it to engage your attention and command your interest, however crude or superficial my treatment of it might be. But I propose to discuss it carefully, though briefly. I shall say nothing which has not been well considered. I pledge my candor for the deliberate forethought of all my utterances on this occasion.

Justice is nothing if not indifferent and impartial. All the passions, when aroused, are unfriendly to it; they are all respecters of persons; the benevolent passions incline us to favoritism, the malevolent to a blind antagonism. To be indifferent means to be free, not only from prejudice, but from the influence of active emotions; for active emotions sway the mind in this or that direction, and justice is so essentially rational that nothing but the dictates of reason can be heeded in rightly dealing with it. It is purely intellectual, and in no degree emotional. Abnormal emotion is always a disturber. Even righteous indignation and holy horror are impertinent intruders in an affair of justice.

Emotional justice has no standing in the forum of right reason, and ought to have none anywhere. It should be so effectually overruled and discredited as to leave it without favor in public opinion or in private judgment. Unfortunately it has now two scenes of baleful activity; it works out of court, and in court. In Georgia, as in most of the States, we have two tribunals for the trial of high crimes and misdemeanors, the one *de facto* the other *de jure;* the one holding its frequent sessions outside, the other its stated sittings inside, of the law. The mob exercises concurrent jurisdiction with the jury; or rather, the mob makes its own selection of the most flagrant cases, draws to itself exclusive jurisdiction of these, and tolerates the jury in dealing with the rest. Sometimes, indeed, the mob forbears

to interfere in the first instance, even where the case is of choice flavor, only reserving the supreme power of review over the verdict. A distasteful verdict is a powerful stimulant to mob emotion. Mobs of the kind I refer to act always under the provocation of real crimes, and generally under the provocation of crimes the most atrocious and detestable. Their victims, when they secure the right ones, suffer unjustly only because they are punished in violation of law, and by self-constituted agents who have no better right to inflict punishment on the guilty than on the innocent. It is conviction of guilt, not guilt itself, that warrants punishment. All men are equally exempt from punishment until guilt has been duly ascertained and declared. Nothing but authentic justice can be called public justice, or is public justice, either in law or in fact.

It is true beyond question that mobs for the infliction of summary justice on offenders, or supposed offenders, are composed chiefly of good citizens. Without this element, no such mob would or could exist. Mobs of bad men only would not violate law in the interest of law and order. None but the good do evil that good may abound. In so far as the public weal is a motive in the exercise of mob violence, the case is always one of goodness acting under a mistake of duty. If that mistake could be prevented, there would be no mob.

One of the most urgent needs of our time is an earnest, temperate, judicious and persistent remonstrance from the bench, the pulpit, the press and the rostrum, against emotional justice. That essential part of mob material which is composed of good citizens should be made to see and realize that while a mob may punish guilt, its members incur guilt, and that for every guilty person purged out of society by such means, two or more equally guilty are brought in. Nothing is more certain than that mob executions increase the criminal population of the State. The larger the mob and the more secure of immunity, the more criminals are lodged in the bosom of society; and each man is no less guilty than if the crime of the whole mob had been committed by himself alone. This is true both legally and morally. Murder is none the less wicked because perpetrated by a crowd.

Nothing would be needed to convert a State into a colony of criminals but that its mobs should be large enough and numerous enough. Whoever is unwilling for the whole State to become a mob, ought to be unwilling to encourage or share in mob violence.

Not only do good citizens, by converting themselves into a mob, multiply criminals, but they diminish the influence of the jury. The mob seizes on the capital prizes, those cases which count for most in impressing public opinion, and thus the awe which ought to be inspired by the jury is inspired chiefly by the mob. The influence of the mob waxes, while that of the jury wanes. The body which decides between guilt and innocence ought to be the most influential, the most feared and respected of any in society. No organization in or out of the court house should be so terrible to evil doers as a jury of twelve men! No mob, even if composed of first-class citizens, ought to compete with the jury for repute in inflicting punishment on offenders. The jury alone should be conspicuous in the exercise of this high function in behalf of the public. Anything which assumes to be better, and tends to make itself bigger than the jury is out of place where trial by jury is an institution of the country, and forms the chief bulwark for the security of person and property. Society works by and through established institutions, and can work wisely and safely in no other way. To weaken or discredit these institutions is to enfeeble government and bring authority into contempt. If those whose zeal in behalf of the public hurries them into outbreak and bloody violence would expend their energy in aiding the officers of the law to discover evidence and prosecute malefactors, they would indeed be serviceable to the State. As helps and supports in upholding law and enforcing it, they might in a high degree be patriotic and useful. Instead of usurping the functions of the jury, they ought to endeavor to supply evidence and render the jury more efficient. If guilt has been proved to them, they know how to prove it to the jury; if it has not been proved, then they incur the awful responsibility of confounding guilt and innocence; they take the dreadful risk of inflicting punishment on some who do not deserve it. Lately, in one of the lower counties of this State, the mob executed the

wrong man, and the jury afterwards convicted the right one. Whatever serves to magnify and exalt the jury is in favor of the public interest. Not only do mobs defy the jury, they dwarf it and render it insignificant.

But the law itself, as well as its institutions, is wounded and weakened by mob aggression. No people can be happy without that repose which is realized through a sentiment of respect for the law of the land. The law is that to which all alike must look for security and protection; and a silent, continuous and widely-diffused respect in the public mind for law, as something to be obeyed and observed by all, is more influential in preserving peace, good order and a feeling of restful confidence throughout society than anything else. Where mobs rage and violate the law by committing murder at will and with impunity, the public mind must and will be anxious and disturbed, and the greatest apprehension must be entertained by all intelligent and thoughtful people. This is to live in the shadow of a threatened storm, and miss the blessings of peace in a time of peace.

Mobs have no mission, and can render no reason for their existence. Nor would they exist if we could silence their well-meaning, but deluded, advocates and apologists. Especially would it be serviceable to alter the tone and teaching of those public journals which confound the mob with the people, and treat some, if not all, instances of mob violence as cases in which the people act in their own behalf and take justice into their own hands. Nothing can be more manifest than that a mob, as such, is not the people as a political society, nor even any part of the same. To become a mob and do its work, those who compose it must, for the time being, secede from organized society, outrage its most fundamental principles, and trample on its institutions. If society has any law or ordinance that has been proclaimed throughout the civilized world, and that everywhere prevails as binding authority, it is that no man shall be condemned without a trial, and that no trial can be had save through governmental agency and in some pre-established method. Such rules are imposed by society for its own observance as well as for observance by all its members. Neither society as an aggregate, nor any

number of its individuals, can take justice in hand, or have any hand in justice, except by the means and in the manner prescribed by law. Were it known by actual count that all the people of both sexes and all ages had assembled and combined by unanimous consent to perpetrate an act of violence upon the worst of criminals, the case would not be one in which the people had taken justice in their own hands, but one in which, in violation of their own laws, they had assumed to inflict injustice in the name of justice. The people have no hands for unlawful work. Justice is in the hands of the people only when it is in the hands of their organized tribunals. In such matters, the people cannot act otherwise than through their legitimate agents. By appointing these agents and committing all punitive power into their hands, to be exercised in the name of the people and for the good of the people, the people renounced completely and forever all right and all power to transact such business in person, or by means of their own direct intervention. But the truth is, that mobs are never composed of more than a small fragment or fraction of the population. Their arrogant assumption of being the people, or representing them, is entirely fanciful and fictitious. The people neither want such representatives nor could have them if they desired. Between the people and the mob there is no privity, and none can arise or be established. Suppose a mob to assemble in the Capitol and, as the people or as representatives of the people, to assume and exercise the power of legislation. It would be no more absurd or impossible for a mob to usurp legislative functions and make their exercise legitimate than to usurp judicial functions and exercise them legitimately. Should a mob pass and promulgate a statute, or a body of statutes, would it be said that the people had taken the making of their laws into their own hands? What journal or newspaper would venture to speak thus of such a lawless method of making laws? It ought to be deemed equally inaccurate and equally mischievous to speak in analagous terms touching the administration of law by mob agency.

I exhort and adjure all good citizens to co-operate with the Executive and the Judiciary in staying quickly that violent jus-

tice which is administered by mobs — that wild and lawless justice which is rife in our unhappy country! Children already born may live to see mobs mobbed; large mobs may execute smaller ones; mobs of one race may rise up against mobs of another race; mobs of bad men may become as numerous and more terrible than mobs of good men; brute force, through a long and bloody period of disorder, may reign supreme!

. . . . . .

I have reached now the immediate and main purpose of this address. It may be asked, why should one speak to a body of lawyers on mob law? Are not lawyers everywhere conservative and law-abiding? Save in a few rare instances, one of them a late deplorable instance which shocked and humiliated the whole country, has any American lawyer of high or low repute been known to lead or take part in mob violence? To the honor of the profession be it said, there is virtually no mob material within its ranks. Not only so, but of all orders of men, excepting not even the reverend clergy, lawyers are the most unanimous and persistent in condemning and opposing lawless violence as a substitute for public justice. For this there are several causes, the chief one being that the whole spirit and training, as well as the interest of the profession, incline them in favor of regular and orderly administration of justice through the institutions of society and according to the forms of law. To aid in such work is their vocation. For the method of carrying on this vocation, they alone are responsible. In so far as that method tends to infuse undue emotion into the administration of justice, it is pernicious and reprehensible. The advocate while engaged in addressing the jury for this object and with this effect, is a sort of mob orator, and a direct promoter of emotional justice. The great danger to justice in court, as well as out of court, is passion. A jury swayed by passion is a moral mob. Emotional verdicts of acquittal rendered by excited juries are perhaps more numerous than mob executions; and between these two forms of emotional justice, the first often bears the relation of cause to the second. Some culprits are dispatched without a trial because several others have been tried in vain. This reason is a lame

and impotent one, but its existence as a fact cannot be ignored. The work of lawyers at the bar thus causes, consequentially and undesignedly, lawless violence out of court. Let lawyers cease to arouse and play upon the sympathies and antipathies of juries, and the mob will soon be deprived of its most plausible excuse for insolent intervention and bloody activity in affairs of justice. There is no sounder justice administered in any country than by justices of the peace in Georgia. These magistrates generally act coolly and dispassionately, although they try questions of fact as well as of law. They seldom fail to reach substantial justice. Juries would be equally successful were they not lashed into undue excitement by the appeals of over-zealous counsel. Emotional justice takes even a wider range in court than out of court. Mobs confine themselves to criminal practice, but the emotional lawyer has cases on the civil as well as on the criminal side of the court. When he has a woman for a client and a corporation for a defendant, he is irresistible. The jury, through their inflamed passions, will respond to his appeals by awarding the highest amount of damages which their over-heated consciences will sanction. This happens not seldom when, according to law and right, the verdict ought to be for the defendant. To lynch corporations, or any other class of suitors, by exorbitant or unfounded verdicts, is to give mob spirit sway in the jury box. That the emotional stalwart has not long ago ceased to be extant on the forensic scene is one of the marvels of practical jurisprudence. The atmosphere of a court-room should always be serene, so that the mental processes of court and jury may go on deliberately and tranquilly. But too often an emotional cyclone sweeps through and carries the jury away. Counsel, by the prevailing practice, are permitted to excite the jury at will. If the spectators also become excited and manifest it by applause, the applause will be a contempt of court, and the enthusiastic individuals who applaud, if they can be identified, will be reprimanded and perhaps fined; but the eloquent counsel who produced the excitement will not even be admonished to forbear from launching out in another burst of emotional eloquence the next moment. This is something like punishing people who take poison, without

so much as reproving those who administer it. The eloquence to which I allude is not that which emits light, but that which emits heat only, or much heat with little light. Intellectual eloquence is no less legitimate in court than anywhere else. It is emotional eloquence which is pernicious; its unfailing tendency being to pervert or prevent justice. It is said that this order of eloquence at the bar has much declined, and is still declining. That it ought to go out and disappear entirely, as something wholly incompatible with the functions and purposes of courts of justice, is absolutely certain. Counsel should be called to order no less promptly for attempting to excite the jury, than for misstating the evidence or for asserting facts as to which the evidence is silent. The work of all courts is mere business. The great mass of forensic business is concerned with two questions, first, whether the alleged wrong, public or private, has been committed; and secondly, if it has, what redress is due. When both of these questions are correctly decided, justice is realized; if either is decided incorrectly, there is a failure of justice in the given instance. In no conceivable case can a right solution be aided by exciting the jury. On the contrary, coolness and calmness at all stages of the trial will always be favorable to truth and justice. In court, as well as everywhere else, we want intellectual methods that are clean and conscientious. We have learned to respect the rights of person and of property; what we ought to learn is that the rights of mind ought to be equally respected. These rights should never be encroached upon by the practice of fraud. Sophistry is a fraud on reason through the reason; pathetic declamation is a fraud on reason through the passions. It surely is not the duty of counsel to influence a jury by such means; and if not their duty, it ought not to be their privilege. When we want to realize vividly in our own minds the sentiment of justice, or the idea of justice, or the conditions of justice, we do not endeavor to excite our passions, but to think coolly and deliberately. Why should we not deal with other minds in the same way? Emotion in its normal state is harmless; it offers no hindrance to justice. But when excited and inflamed,

it is mental intoxication — it unbalances the reason and unfits the mind for safe and trustworthy deliberation.

With less emotional justice inside of the courthouse, there would be less, perhaps none at all, on the outside. No greater good could be done than by withdrawing emotion as a force from the administration of justice.

WISDOM.

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WISDOM.

What is wisdom? Is it knowledge? Is it virtue? It is knowledge and virtue combined; the two together constitute wisdom. Knowledge is its light and virtue is its heat, just as bright rays and warm rays mingle in the sunbeam. Knowledge alone is too cold; virtue alone is too dim. To be wise we must discern truth and love duty. To know is not enough; to feel is not enough; we must both know aright and feel aright, and from this right knowledge and right feeling we must send forth a life-stream of right conduct.

Wisdom is of many degrees. In its highest state it is omniscience united with perfect love. Any state attainable by man is far lower than this; yet even man, when liberally endowed by nature and placed under favorable conditions in life, may become very wise. A few great names in the history of the world are examples of this pre-eminence. Mere human wisdom does not include or pre-suppose a knowledge of all truth. If it did no mortal could be wise. To be eminently wise much knowledge is requisite; but a safe, practical standard of wisdom can be reached with a very moderate stock of knowledge, if of the right kind.

Indeed, there is a sort of wise-headedness that seems like instinct. Some persons are blessed with this peculiar faculty, and often surprise us by making their way discreetly with a most scanty store of general knowledge. They seem to acquire instantly what they need and precisely when they need it. This power of rapid acquisition is with them a substitute for accumulating and storing up in advance, just as a man with plenty of money to buy his corn and bacon as he needs them has no occasion to fill his crib or smoke-house. No doubt there is such a thing as a special genius for wisdom, just as there is for mathematics or music — that here and there are wise men who have not become so by previous systematic study in the ordinary way.

As all knowledge is not essential to wisdom, and as some persons can be or become wise without any prescribed or regular course of study, what element or class of knowledge does wisdom necessarily involve? I answer the knowledge of proportion; the faculty of comparing two or more things, thoughts or subjects, and of settling their relative rank, not mistaking the less for the greater, the unimportant for the important, or the less important for the more important.

The grand practical office of wisdom is to guide choice and govern conduct; and to choose you must distinguish, and to choose wisely you must distinguish truly and according to relative rank and real value. But as wisdom is not knowledge only, but includes virtue as well as knowledge, it is not enough to discern what choice ought to be made; the next step is to make that choice and carry it into effect. To ascertain how and what to choose is barren work, unless it is followed in due season by choosing accordingly; and a choice made is still barren so long as it remains unexecuted.

Two or three of the most important dictates of true wisdom may be formulated thus: Never choose evil rather than good; never sacrifice a greater good to a less; never shun a less evil at the expense of a greater. Whoever supposes that it is ever wise to do wrong is mistaken. Wisdom and rectitude cannot be at variance. Our true interest always coincides with our real duty. If they appear separate sometimes, the appearance is delusive and the result of our short-sightedness. Could we see clear through to the end we should be in no doubt upon the subject. Moreover, our real duty always coincides with sound morality. There can be no conflict between moral principle and each instance of correct moral practice. As certainly as the whole includes all the parts, so certainly does general morality comprehend all particular morality. "We must fight the devil with fire" is a false maxim, and would be most pernicious if it were believed in and applied every time it is quoted. Fire is the devil's own element — his own weapon, and he can handle it with more effect against us than we can against him. The true rule of warfare on out part is to fight the devil with virtue. If we cannot over-

come him in that way the battle is hopeless. Why should we despair of virtue or lose confidence in it as a means, whatever may be the work in hand? If we have a worthy end, why should not all our means be worthy too? Let us never lose faith in virtue, but regard it as a force which, though it may be obstructed by vile practices and temporarily thwarted, can never be defeated except by the treachery of its own friends. If we live in a time of cheating and swindling, must we cheat and swindle too in self-defence? God forbid. If others steal from us and escape punishment, must we steal from them? Never, never. On the contrary, the worse others are and the fewer those who are uncontaminated by their example the truer and more faithful should that few be, for otherwise all would become utterly vile and the very seed of goodness would perish and be lost. And I will venture to add, at the risk of meeting with some dissent, that there is the same reason for rigid honesty in politics and public life, in elections and with electors and elected, as in ordinary private business or personal conduct. The political devil is no more to be fought with fire without terrible consequences to the best interests of the community than is the devil of avarice, or of envy, or of ambition, or any other of the numerous devils which infest society.

In my humble opinion, whether considered as a question of policy or of principle, the right way to deal with any devil whatsoever is not to put yourself under another devil of the same sort, or even of a different sort, and fling fire from one devil's host to another, but take the field under some good captain and fight as valiantly as you can with true and pure weapons. You may not win the first battle, or the second, or the tenth, but when you do prevail it will be a real victory, and not a sham, and above all, you will still deserve success, and be at least as good after the contest as you were when it opened; and your example will not have misled others, nor corrupted the public mind and seared the public conscience. I speak from a standpoint quite outside of politics and party lines, and what I say may be too visionary and theoretic for practical working, but if we have reached a stage of degeneracy where virtue has ceased to be practical,

and where vice and fraud are forces of such potency that they can be met and resisted only by forces of like kind, I think wisdom is already a lost art, that we are on the confines of perdition, and that ere long we shall tumble over the wall and be swallowed up in the pit.

The really inexpedient and non-practical is the wrong, the wicked, the impure, the unworthy; the really practical is the right, the righteous, the virtuous, the worthy and exalted. The failure of wrong may not be speedy; it may be afar off; but fail it must and will in the end. To be false is to fail sometime and somewhere, and wrong is false. It is failure in its very nature, and cannot conduct to permanent and enduring success. Such success as it meets with is but one of the steps to its final catastrophe, and either expedites its fall or serves to render that fall more overwhelming and complete.

So much for the choice of good in preference to evil; but a much nicer problem is presented when the question is between a major good and a minor one. We have passions which solicit us strongly to this or that present good, though it may be temporary and of small value. What is near at hand attracts us more powerfully than what is remote and apparently uncertain. That "a bird in the hand is worth two in the bush" has become a proverb, and is repeated over and over by thousands and probably by millions. The proverb means that a desirable thing in actual possession equals in value two similar things which we have not yet secured and which may probably never be in our power. It teaches that good is not always to be measured by count or bulk, but that certainty of attainment is also a prime factor. But unfortunately it is not alone the uncertainty of attainment which puts future and distant good at a discount. A far more disturbing element is our impatience to enjoy — our impatience to consume. We not only want to count the chickens before they are hatched, but we want a good mess of chicken for dinner this very day, and consequently we kill and cook the hen before the eggs are even laid. We may know to a reasonable certainty that if we spare the hen the eggs will be produced, and that in the course of a few months we may enjoy ten

chicken dinners in lieu of this one; and still we are unwilling to deny ourselves now for the sake of so much more hereafter, and so we wring the hen's neck or cut off her head, and she passes through the kitchen and mounts the dinner table in a dish. And we are happy for the space of about thirty minutes. We manage, however, to eat more hen by going in debt. We anticipate that next fall we shall have money from the sale of our cotton, and upon that expectation we purchase divers hens on a credit, not to eat next fall after they are paid for, but to eat along in the summer before they are paid for. We thus eat out the fall in the summer; we eat next week this week; we eat to-morrow to-day, and we ate to-day yesterday. Instead of marching with our supply wagons in the rear and eating from behind us, we march with them in front and eat ahead. Having the mouth in the face and not in the back of the cranium, we think we must draw support from the future and not from the past. We proceed as if we had literally to gnaw our way with our teeth to where we are going. Impatient to consume, we cannot wait to produce and consume afterwards, but we anticipate production, strain our credit, and finally pay double the regular cash price, or some exorbitant rate of interest, or break and never pay at all. And our only consolation is that we have had the hens, eaten every one of them, and lived high during the summer.

Why are not orchards as numerous as gardens? Lettuce and mustard, cabbages, potatoes, parsnips, onions, cucumbers and such like vegetables are quick to mature, and may be gathered and eaten in the same year in which they are sown or planted, while trees are of slow growth, and if we plant apples, peaches, figs and pears, we must wait years for the fruit. This waiting is a tedious business. If we are to be blessed at all we want the blessing now. And what is now? Perhaps few of us realize how very brief the present is. We speak of a second as if a whole second existed at once. But there never has been such a thing as a second of time, and never will be. Time comes to us in portions so minute that if all of it that really exists were separated from what has perished and from what has not yet been created, the interval would not be the ten millionth part

of a second. We construct mentally seconds, minutes, hours, days, weeks, months and years, but actual time is but a moment, and each moment is created precisely when it appears, and dies forever immediately after it is created. The past is all extinct existence; and the future is potential existence—that is, a name for what is to exist hereafter.

There is no to-day, no yesterday, no to-morrow. There is nothing but this present moment. But just such a moment, and another, and another, so long as it may please God for time to continue, will follow, and these moments, before they come, and as they come, and after they are gone, will be added together mentally into the various ideal divisions of time which I have mentioned. But no mental operation which we can perform in respect to time can or does affect its nature in the least. We do not keep the past from perishing by dividing it up into years, etc., nor do we by making like divisions as to the future, impart to it any reality in advance of its becoming the present. Next year's almanac is not an account of what is, but a prediction of what will be. I desire to impress you with the brevity of actual time so that you may see clearly that whosoever sacrifices the future to the present sacrifices the greater to the less. As long as we have two moments left, we have twice as much in the future as in the present, and one hour yet to come is worth many thousands or millions as much as the moment that now is. Instead, therefore, of being in haste to consume, we should consume sparingly and produce abundantly. The ability to produce may cease long before life terminates, and what an ugly thing it would be to be cut off in debt to the world and leave behind nothing, or less than enough, to square accounts.

True wisdom takes cognizance of time as a ceaseless repetition of moments, and values two moments at double the price of one. It prizes a year as having twelve times the importance of a month; a month as thirty times that of a day, and so on. Moreover, it distinguishes, on the same principle, between time and eternity, and between a life which is to end and one which is to endure forever. What the preachers tell us of the folly—nay, the madness of bartering the life to come for forbidden

enjoyments and indulgences in this life is doubtless very true, and if true is very terrible.

Many persons are in perplexity on the subject of miracles, and find it difficult to credit that water has been turned into wine, or death transformed into life. But if time is anything at all, it furnishes an example of a miracle constantly performed and constantly repeated; for to create a real something out of nothing and conceal the process is a miracle of the highest order. In the production of time, the creative machinery, so to speak, is always at work. Space is finished and is suggestive of Divinity at rest; time, on the contrary, is incomplete and seems to emanate from a divine activity that never intermits. Of course, time has no dependence whatever on the bodies that are in space or on their movements or revolutions; day and night alternate, the seasons change, but time changes not; each moment is like every other moment, just as each part of space is like every other part; and the whole of space is in one and the same point of time, and one and the same point of time is in every point of space. The infinitely large, which is space, is thus brought within the infinitely brief, which is time, or the infinitely brief is diffused so as to be co-extensive with the infinitely large. The same moment of time is everywhere at once, and thus time is a literal emblem of Divinity in the great attribute of omnipresence. While we are in actual contact with these two infinites, time and space, and while in them we live and move and have our being, why should we feel that God is afar off? No matter how much we desire privacy, we cannot withdraw beyond the presence of the infinite. When you enter your chamber and shut the door and lock it, and blow out the light and make all dark, time and space are there just the same as they are here at this instant; and wherever they are God can be and probably is. And what company is God! Think of having him for your companion, your perpetual associate and attendant, and wonder that you can ever be regardless of his presence. If he sees you commit an act of shame, what will it avail that you are hidden from all mortal vision? I am not seeking to alarm your modesty, but to put your conscience on the alert, and to make you

realize that there is no reason why God is not as wise touching your every misdeed as you are yourself, or as time and space would be if they were living intelligences. In fact, there is no certainty that space is not spiritual and a part of the all-comprehensive and everlasting God, or that we are not literally in the hollow of God's hand.

In what I have said of our eagerness to consume, and to snatch from the future much of that which appropriately belongs to it, I have not meant to disparage any just claim of the present to reasonable and moderate indulgence, nor to commend the practice of hoarding for the mere sake of having and keeping. What I wish to teach is that we should at least stay even, and not feast on what is yet to be earned or paid for — that we should not mortgage the future to obtain means to support the present, but, on the contrary, should endeavor to bring over from the past more or less surplus, and thus provide, in some degree against the contingencies and casualties of the future. It would be most unwise to deny ourselves what we can afford and what we actually need. A man is far more important than all he has or all he hopes to have. Real excellence is internal, not external, and to exalt what we have above what we are would be to set the inferior over the superior. The great business of life is not to have, but to be. The rearing, training and development of human beings, including ourselves, is beyond all odds the highest end which we can pursue. A world full of first-class men and women would be the richest and most precious world that could exist. What our children are is everything — what fortune we may be able to leave them is not immaterial, but is comparatively of little consequence if they are all right mentally, morally and physically. It is far better to have a worthy child than to be worth an immense estate. The Bible puts a high value on children, nor does it over-rate them if they are good; but if they are vicious and depraved, and will not amend, the trouble they occasion is beyond the power of words to express. Good children do not need any great abundance upon which to begin life, and bad children do not deserve it, except upon the condition of reforming. The best service which

we can render to the young is to put them in a condition to help themselves. The most effective means of doing this yet discovered are correct moral and industrial training, together with a liberal education. No human being can be brought to his best state without educating him. As a violin must be put in tune and kept in tune in order for it to give out a fine strain of music so a man or woman must have the mental faculties developed and harmonized by education, or the conduct of life will, for the most part, be a weak and discordant performance, compared with what it might be. To deny that education is beneficial is no less extravagant than to require a musician to play without first tuning his instrument. Indeed, with the human instrument the being and keeping in tune is the main concern, for as the chief concert for which it is supposed to be designed is beyond this life, the capacity to make good music there is of far greater importance than all the music it makes or can make here.

Education promotes mental growth, and full stature cannot be attained without it. To be large-minded ought to be desirable to all. The size of the body is not very material, but who that can help it ought to be content with a little mind? Some have not the opportunity of acquiring an education, and of course they must forego its advantages and do the best they can without it; but it is utter folly to restrict education by voluntary choice, either in degree or in the number who are to share in its benefits. If every man and woman were educated to the utmost, there would still be enough inequality and enough unlikeness. There is no danger that the world will become idle and useless as soon as the masses become learned. With the spread of knowledge, methods of labor will multiply and improve, so that the ratio of production to labor will increase to such a degree that the mere necessaries of life will be easily supplied, and our great business will not be to get money, but to get more knowledge. Most probably the reason why money is so generally an object of pursuit now is simply to afford us occupation until we can become enough enlightened to work with equal ardor after knowledge. The latter is a far higher and nobler prize to toil for, and is destined to take its true place at

the stock exchange and in quotations of the market. One scholar will hoe another's cabbage, not for so many dollars per day, but for so many ideas which have never occurred before to any man, learned or unlearned, except the owner of the aforesaid cabbages. It may be, too, that the modes of supporting animal life will be discovered which will put a stop to the consumption of cabbages, and render it quite needless to produce them except for purposes of ornament or to facilitate the study of botany. If the work that is now done to earn money, or money's worth, could be devoted to the acquisition of knowledge and the spread of enlightenment, the increase of wisdom would be so vast in a few generations that to meet with an ignorant adult would be more rare than it now is to find a well informed child. It is to knowledge that we must look for devising means to promote its own increase. The more that is known the more will be known, and the more rapidly will fresh knowledge be acquired. If the whole world would search for truth, immense stores of it would be discovered and our wealth of knowledge would become great. And still there would be no danger of ever exhausting the material. Truth is so abundant that Omniscience only can ever be master of it all.

REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

Submitted at the First Annual Meeting of the Georgia Bar Association by Judge L. E. Bleckley, Chairman of the Committee, August 13, 1884.

Reprinted from Annual Report.

REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

In the administration of justice there ought to be correctness, celerity and cheapness. The second, alone, is the topic of this report.

Time is the increasing factor — the growing element of modern life. Progress is the realization, in short time, of what formerly occupied long time. At least, this is one form of progress, and that form with which we of the nineteenth century are in immediate contact — a century that, if measured by results in some of the spheres of human activity, might well count for a thousand years. How is it with practical remedial jurisprudence? Is it up with, or is it behind, the age? Compare it with other business, public or private; with operations of the War Department, the Navy, the Treasury, the Post-office, the Interior; with commerce, manufactures, banking, transportation, mining, farming; with the venerable and conservative vocations of teaching and preaching; with anything, and what is its relative position? The main bulk of world-work is ahead of it; several branches of that work, for instance, the postal service, general transportation, commerce and manufactures, are so far in advance that the law seems to crawl whilst they go on wings.

Is this relative backwardness a necessary condition, rooted in the nature of things, or is it attributable to deficient energy and enterprise on the part of the legal profession? Can it be possible the law is to become obsolete; that the ages are to outgrow it; and that, though sufficing for the past, it is not equal to the demands of the future? Will it be Bradstreeted as a failure? Surely this supposition cannot be entertained. And if not, the conclusion is imminent that, either directly or indirectly, we lawyers are responsible for the wide chasm that separates the effective administration of the law from those

industries, public and private, with which it ought to be abreast. Is it fit that a body of men so numerous, so cultivated, so capable, should suffer their quota of labor, their distinctive calling, to remain hopelessly behind? Let a noble, manly pride answer in the negative.

No single measure, perhaps no dozen measures, would be adequate to the full accomplishment of the needed reform. But there is a step that may confidently be recommended as the initiative, and that is, to draw sharply the line between the two branches of administration, the judicial and the ministerial, and to confine entirely to the latter the great bulk of formal or unlitigated business. The subjects of administration are crime, tort, title and contract. In the last of these groups is always embraced the current business which commerce and all the other active pursuits pour into the Courts. This group represents, in the main, the legal business which general business produces. Most of it is plain collecting — uncontested, unlitigated. Were it all of that class, its appearance in Court would be an empty ceremony, but because some of it is litigated and some not, both classes appear at the bar together, that they may be distinguished and severally identified, and that trial may be had where there is controversy, and formal judgment rendered where there is none. Now, the precise suggestion we would make is, that the formal judgment is useless, and that for purposes of distinction and identification this circuitous and dilatory method is wholly unnecessary. At present we shall limit the suggestion to a particular, though very extensive, order of contracts, namely, unconditional written contracts for the payment of money. There is no propriety in any of these entering Court at all, in the first instance. Of the two administrative stages, adjudication and collection, the former, in dealing with these cases, should be omitted; for the latter alone is appropriate, and it alone is amply sufficient. All that good methods of business, good logic, good morals or good manners, require is that the original writing shall be registered, filed and remain in the Clerk's office, and that an execution founded upon it be issued by the Clerk and enforced by the Sheriff. What would warrant a judgment on

mere inspection is intrinsically as worthy of confidence without a judgment as with it. Relatively to the execution, it, at last, is the real producer, and the judgment a superfluous middleman. In the light of experience, absolute, definite written convention between debtor and creditor imports no less verity than do the adjudications of Courts of justice. Of ordinary bills and notes outstanding, as large a proportion as of judgments represent just debts. The law itself, in the special matter of negotiability and transfer, treats the former, before maturity, as superior, and after maturity, as equal to the latter. What, indeed, is of higher credit than a man's solemn written admission against his own interest — against himself? Every man his own judge, is far better for his interest than "every man his own lawyer." After he has adjudicated his case for himself, audited the amount and fixed the time of payment, what need is there for further adjudication? Nothing material is left open except breach of performance; and that question the law settles *prima facie* in consonance with the possession of the paper, which possession ought to count for as much with the clerk as before the judge.

Of course, any meritorious defense whatsoever, whether of law or of fact, should be available when presented by way of affidavit of illegality to the execution. Let such an affidavit be the direct means of distinguishing litigated matter from the unlitigated, and let the issues presented by it be tried and determined as is now practiced in cases of ordinary affidavits of illegality. Certain restrictions and qualifications may be proper in case of the debtor's death, or of other providential contingency, the details of which can be definitely settled by statute. Only the general principle of the system is here indicated.

It will be observed that of the four subjects of administration only one is directly affected by the carefully limited measure now proposed. No doubt the others will be affected incidentally, but only for good. The immediate aim is to bring up legal business to the prompt support of general business. The time relation between them is out of proportion, and calls for fundamental readjustment. A statute conceived wholly in the modern spirit, and fully up with the progress of the age, will alone

suffice for the purpose contemplated. Although lawyers, as such, do not legislate, they prompt and inspire legislation. They can promote or obstruct law reform at pleasure. It is chiefly because of this indirect power over legislation that they are responsible to the public for the general state of the law. There is no good statute that they cannot have passed; no bad one that they cannot have defeated or repealed.

So vital a change as this report advocates cannot escape opposition, but will encounter it, doubtless, both within the profession and beyond its pale. "Changes in procedure," says Professor Amos, "are the most difficult of all changes in the law to bring about." The profession numbers and will always number among its members some typical lawyers, envoys from the past to the present, messengers and expounders of precedent. Innovation, especially abrupt innovation, they regard as western adventure, or as rash speculation in legal futures. Venerating experience, they distrust experiment, preferring the growth of law to legislative manufacture. In their school of art the novel is the grotesque; nothing is absolutely pure save the works of the old masters, and the approximately pure are works executed in their style, and those only. Their intense conservatism, though in some respects virtuously pernicious, breathes a beneficent utility, and aims at exalted public ends. To ascribe to them selfish or interested motives would be to commit an ungenerous mistake. Not the flesh-pots of Egypt, but the perils of the wilderness, retard their advance to the promised land — perils to the commonwealth of Israel, not merely to the individual or the tribe.

Few, perhaps, are so frozenly conservative as the present Master of the Rolls, who is credited with saying recently that law could not be quick or cheap, or brought to every man's door, and that if it could, it would be the greatest misfortune that could happen to the country: 30 *Albany Law Journal,* page 2. The Queen's justice, according to this reputed deliverance, must and ought to be slow and dear and distant. Such protection to the subject in return for his allegiance looks cold and ungracious. A widely different standard of administration is that

desiderated in the pages of this report. Correctness, celerity, cheapness — cheapness to the suitor, not to the public. If it required all the resources of society to place the faithful subject or citizen in possession of his rights and to secure him in their enjoyment, to that object should they be devoted. Sovereign power has no higher or holier function than the redress of grievances — the distribution of justice; and time is of the essence thereof. Were it practicable, every man should have his rights as promptly as his letters or his morning paper.

Respectfully submitted,

L. E. Bleckley,
Henry B. Tompkins,
Alex. C. King,
W. H. Dabney,
Committee.

Judge Bleckley: It is signed by all the members but one, and his assent we did not have an opportunity of obtaining. I also have a supplemental report which I will read. I will state, for the accuracy of the facts of this report my brother, the Secretary, (Walter B. Hill) is responsible, though I indorse them. I have not had an opportunity of investigating them.

Judge Bleckley then read the Supplemental Report as follows:

SUPPLEMENTAL REPORT.

We favor the adoption in this State of a system of procedure known as the Code of Procedure, by which causes of action, whether legal or equitable, are presented to the Court by petition, "plainly, fully and distinctly," and by which defenses thereto, whether legal or equitable, may be similarly interposed. This procedure, adopted in New York in 1843, is now in force in a majority of the States of the Union, was adopted in England in 1873, and is the system upon which the best legal and judicial talent is employed in building up a rational method of procedure in civil cases.

2. The distinction between law and equity jurisdiction, while susceptible of historical explanation, has now no foundation in

principle. Suitors are entitled to their rights, as such, when they resort to the Courts, irrespective of the question whether such rights were recognized in England as legal or equitable. This is especially true under a system like ours, in which precisely the same tribunal administers both systems.

3. Those States which provide for suitors separate Courts of law and chancery, and maintain strictly the lines of demarkation between the systems of law and equity (as New Jersey and Alabama) are consistent in their legislation. So, also, are those which have completely obliterated the distinction and have adopted the Code of Procedure. But the legislation of Georgia, in which the Courts are consolidated but the jurisdiction separated, in which law and equity are half-way merged, is anomalous and inconsistent. It puts our judicial system out of harmony with every other and deprives us of the advantage of that assistance which we might obtain in the development of our jurisprudence from the working of harmonious systems in other States.

4. The fact that two of the Constitutions of Georgia have contained a provision authorizing the General Assembly to merge the law and equity jurisdictions may be taken as strong evidence that the people, speaking in their most solemn form of utterance, have desired to bring about this change in our judicial system.

Resolved, That we, therefore, recommend that the President appoint a committee whose duty it shall be to prepare and present to the next General Assembly, with this recommendation, a Code of Procedure, based upon the following principles:

(a) The Superior Court of this State, on the trial of all civil cases, shall give effect to all rights, whether they prevail at law or equity.

(b) In all cases where there is a conflict or variance between the principles of law and equity touching the same subject matter, the principles of equity shall prevail.

Respectfully submitted, L. E. Bleckley,
Henry B. Tompkins,
Alex. C. King,
W. H. Dabney, *Committee.*

REMARKS OF JUDGE BLECKLEY ON THE PRECEDING REPORT.

(From the stenographic report of the proceedings.)

Mr. Bleckley: Mr. President and Gentlemen of the Bar Association, nothing more distinct, nothing more definite, has been proposed to this Association than is embodied in the report which I had on yesterday the honor to submit. It contemplates dealing now with one branch of legal business, which is what may be termed the collecting business of the country. The mode which it recommends is to provide by statute for the registry and filing of promissory notes and bills and other written evidences of contract, unconditional, for a specific amount, to take the instrument itself and give it credit, to consider it not discredited so long as the creditor has it in possession and has control.

It is for the law itself, through its ministerial officers, to administer itself without a judicial form. The analogy that is presented to my mind in adopting that scheme is nature itself. There is no judicial department in the laws of nature. There we have the legislative and executive with the judicial omitted. The laws of nature execute themselves. They are automatic, applying themselves to the cases for which they were designed, and are executed, so far as we can know or see, without any intermediate interference by any power in the given case. Now, it is practicable and altogether feasible for human law to be applied in the same manner, that is, for the law, which is really sovereign, to speak and give it direction in a general way without any special expression through a judicial organ, on a given case. That is the scheme that is submitted to this Association for its adoption or disapproval. It is to treat what the debtor does, what he originates, as unrepealed and unmodified so long as it is outstanding, as it would be treated by a Judge, if a Judge dealt with it. The inference would be made that the debt was still owed. It is a cheap and expeditious practice, a proper

and just practice, because the creditor is as much entitled to his money the very moment the contract is due as afterwards, and it is a species of injustice to make him wait. If you want a cheap law, a prompt law, a trustworthy law, you can get it by simply administering to the debtor his own contract; and that is the principle of this report.

Now, I beg you to meditate on it; reflect on it; come to it with your own good common sense. There is no reason, if I owed Jenkins on a promissory note that he should not go to the Clerk's office the day after it was due and get out an execution and make me pay it. Let the law be its own administrator like the law of nature. If the law of nature deals with you six months from now, it don't send you to a Judge, but it takes hold of you and shakes you up, and that is the way our human law ought to do in these plain matters where there is no controversy. Where there is a controversy, let the question be made up and go before a Judge for adjudication.

Now, my brethren, members of the Bar of Georgia, there are truths that you may fail to look at. There are those who look through professional spectacles that I have put off. I do not care how you restrict this remedy, but I say the principle of it is right, and I ask you to recognize the principle and apply it cautiously, at first.

Mr. Vason: Does it not follow the common law remedy of recapture?

Mr. Bleckley: No sir. It does not go as far as the law of distress entitles a man to go. He does not send his bailiff, but the law appoints a minister, and he has to appeal to him. It is not a case of a man redressing his own injuries, but using the ministerial officers of the law. You might just as well have a writ issued for everybody to show cause concerning a deed why it should not be recorded. A man knows when he owes a debt. He settles that just as effectually as the execution of a deed is when he executes it. Vote against it if you want to, but let us dispose of it, because I am going to stand on it. I am going to lay down on it. (Laughter.) I am going to camp on it, (great laughter), because I am thoroughly convinced, as

you see by my manner. (Laughter.) It is right; and none of you can say it is wrong, except you speak in the line of old precedents. I confess it is a new departure, and I want it to be. That is what we need. If we go along in the old way we will never catch up in the world. We will never catch up in the world if we go marching about here in this manner and call upon everybody to help us. I tell you it is a misconception, it is a mistake altogether. We are ready for the question if we only knew it, and the right way to do it is to appoint a committee, it seems to me. I abstained from making any direct recommendation in the report as to how it should be done. My scheme is as definite, Mr. Chairman, as yours was about salaries, or as that about legal education. It has got as much point in it, as easily apprehended, and it is as definite and distinct as either of those! Why not appoint some one to go out and enquire what he thinks of the salary question or the educational question? (Laughter.) Now, I beg you to consider how simple this thing is, and how safe it is if you will confine it to future transactions.

I have occupied your time perhaps too long. I have gone over my ten minutes, which I believe is the limit. But instead of passing that resolution that you have reconsidered, if it was not for the modesty of making a motion for the adoption of my own report, I would do so. If I have got any friend here, I would be glad if he would move it. (Laughter and applause.)

THE POET BLECKLEY.

BY JUDGE JOHN W. AKIN.

A Paper Read Before the Georgia Bar Association
at Its Twelfth Annual Meeting, October 3, 1895.

Reprinted from Annual Report.

THE POET BLECKLEY.

A son of the mountains; catching in early youth an inspiration from their blue heights which probably only those feel who live within their shadow — an inspiration of the ideal and the beautiful which makes one think the unspeakable and turn to poetry in the hopeless effort to tell what he feels; marrying the law and devoting himself to this chosen spouse through a long and active life, until, when the shadows are lengthening fast, he voluntarily divorces himself from this mistress of his youth, in order, as he fondly hopes, to chase the more swiftly and catch the more quickly a Phantom which, like a mirage in the desert, has danced before the deluded vision of the wise for ages past, only to slip from their empty grasp — the Phantom of Financial Truth; delighting by his comradeship the practitioners who met him in the forum; ennobling the ermine of the highest judicial chair in this proud commonwealth of noblemen, until, tired with the ceaseless drudgery of an over-worked bench, he voluntarily retires to his mountain home, followed by the love of all who came within the domain of his influence; — this is the man on the poetic side of whose image we shall look for a moment to-day — the poet Bleckley.

A few of the older members of the bar remember General Henry L. Benning, once a Supreme Court Judge, who, spared in battle, died ten years after the war. Among the earliest poems of Judge Bleckley was a tribute to Benning, whose concluding lines are interesting because this was probably the first published essay of his muse:

> In peace it was his lot to die;
> In peace, O, may his ashes lie!
> And sweetest peace, while ages roll,
> Attend his noble, manly soul!

One dear to him married and moved away to Montana. On this he writes a poem whose opening stanza contains a pretty conceit. The whole is worth repeating. It is entitled

GEORGIA—MONTANA.

The cheeriest, brightest summer day
  Alas, to us is lost!
By love too rudely torn away
  And carried to the frost.
Oh, was it not a cruel crime
To snatch a piece of summer time
And set it in a winter clime?

No wonder if we sore complain
  In tones and tears of woe;
Transplanted is our sugarcane
  From sunshine into snow;
Transplanted from the balmy breeze,
To blizzards cold enough to freeze
The sweetness in the maple trees.

A summer pearl of precious price
  Before the swine of winter cast,
An orange blossom in the ice,
  A tropic odor on the blast,
(Bereft, alas, of solar beams);
'Tis thus our absent sister seems
To us in all our thoughts and dreams.

I have no proof that Judge Bleckley is one of the many authors of "The Beautiful Snow;" nor have I discovered among his productions a poem on "Spring." But I have found one which was evidently written when the Judge was in the country, and which reminds us of the mental attitude of Virgil in some of his Eclogues, not the best things that Virgil wrote. It is entitled "The Farmer," and in reading it one can almost hear the drowsy hum of bees at dinner-time, when the air is still and warm, and the sunshine beats down in a steady rain of gold upon the tulips and the roses. If the author of "The Frost is on the

Pumpkin" had published "The Farmer" under the name of James Whitcomb Riley, the two productions would probably have ranked together. I quote one stanza:

> A subtle beauty, sweet and fair,
> Which nothing can subdue or shatter,
> Forever floats on earth and air
> And clings to every shape of matter.

Happy the man whose vision, turned away from the sordid and clarified by sweetness of heart, can see this "subtle beauty" of which the poet speaks! For him the beautiful blooms in every flower and shines in every star.

Religion and poetry! How naturally are they related! Is each a part of the other? Or are they distinct and separate, yet connected by some subtle kinship? Does poetry tend to make us religious? Does religion make us poetical? Who of the great prophets of Israel did not feel the divine afflatus? Read the rhapsody of Isaiah, whose hope of the Christ to be is set forth in the rugged poetry of his inspired prophecies; contemplate the poetic mysticism of Ezekiel; listen at the plaintive lamentations of Jeremiah; see the vivid picture of the last judgment portrayed in the burning poetry of the lesser prophet, Malachi; behold rugged Patmos in the lonely sea, and hear the apocalypse of the poet-preacher John, as he tells of the golden candle-sticks and the one hundred and forty and four thousand, the walls of Jasper and the sea of glass, the dragon and the scarlet woman, the cry of the souls under the altar, the voice of many waters, the shining river and the new Jerusalem; and tell me, can Poetry and Religion — not the narrow limitations of sect and creed, but Religion — the recementing of the human soul to the heart of God — can these be divorced?

Tom Moore, sensuous and voluptuous as was much of his poetry, never more sweetly struck his lyre than when he sung "Come ye disconsolate, where'er ye languish;" and Tennyson, majestic harpist, soared to the loftiest heights of poetry when,

in the immortal requiem to his departed friend, the *In Memoriam,* he sounded the depths of faith and gave to all who read it a firmer trust and a loftier hope in the everlasting goodness of God.

In one of these stanzas Tennyson said:

"Behold, we know not anything;
I can but trust that good shall fall,
At last, far off, at last to all,
And every winter change to spring."

In another line he said:

"We have but faith, we cannot know;
For knowledge is of things we see.
And yet we trust it comes from thee,
A beam in darkness: let it grow."

These sentiments are echoed by Judge Bleckley, probably unconsciously, (for why should not the great and the good, though separated by oceans, grope after the truth in the same paths of thought?) in the following poem, one stanza of which I quote, on

FAITH.

Cast out into space
For life and for death;
No ultimate base,
No bottom beneath,
No limit or bound
Above or around,
No wall at the side
Or roof overhead,
No cover to hide
Me, living or dead,
No refuge for thought or for sense:
Yet I will not despair
As I drift through the air,
Afloat in the boundless immense;
In the depths of the night
Cometh faith without light,

Cometh faith without sight,
And I trust the great Sovereign unknown;
No finite or definite throne,
But the infinite, nameless, unthinkable *ONE*.

Infinity, immensity, profundity, the unspeakable in space and time, are all here suggested in words that make thought tire like some wild bird flying over a trackless sea, with no land in sight, looking in vain for some rock whereon to rest her weary wing.

Of a kindred nature is his poem on Immortality. He wrote a poem memorial of the wife of Hon. James D. Waddell, now some years deceased. This he divided into three parts: "Immortality," "Omnipresence" and "Medora" — the latter being Mrs. Waddell's given name. We may well pause to hear the two stanzas on

IMMORTALITY.

Oh, she is now so still and strange!
Though this is death, perhaps the change,
  The change we so lament and weep,
  Is not, on inner life, so deep
As sleep and waking out of sleep.
How oft did she in slumber lie?
Her body breathed — could smile or sigh,
The soul appeared to faint and die.
  This charnel death seems sent to clasp
  The body in its icy grasp.

Who knows but sleep is more at strife
With spirit breath, the life of life,
  Than death itself? Yet sleep is rest
  Upon a gentle mother's breast,
  And waking seems a pledge — a test,
Each day, of resurrecting might,
A voucher blazoned on the light,
"There shall be no eternal night."
  If God can common slumber break,
  What hinders that the dead may wake?

The likeness between sleep and death, a theme as old as the myths of ancient times, is here portrayed in a light somewhat new and by no means unpicturesque. The waking from sleep is contrasted with the waking from death; and the power to compel the latter is inferred from the existence of the former. If some unseen power can reanimate the body and reillumine the eye lately passive in temporary insensibility, why may not that same power call back into human dust the inexplicable force which once made it think and breathe and feel?

Our poet was in the same frame of mind — religious meditation — when he wrote a poem on "Fear," whose religious philosophy, no less than its depth of introspective reasoning on a subject which cannot be reasoned out, makes it rank among the best on such themes. I commend its every thought and line to your meditative consideration. A smaller mind would have been ashamed or afraid to say with him:

> That I the naked truth confess,
> Which is, I know I do not know.

Some will agree with him that "the hell of everlasting sleep" is worse than a "hell of pain." Cowper, in that period of deep melancholy which engloomed a portion of his life, would doubtless have sympathized with Judge Bleckley when he said in this poem:

> And thus the chance of bliss for me,
> If lots were cast, is one in three.

Cowper emerged from the shadow and sang that majestic hymn:

> God moves in a mysterious way
> His wonders to perform,
> He plants His footsteps on the sea
> And rides upon the storm.

But Judge Bleckley sees no light in the darkness, and, turning his eyes to the primeval Edenic fear, he concludes this pæan of hopelessness by declaring:

> Like Adam, I have disobeyed,
> And I, like Adam, am afraid.

Judge Bleckley has written some poetry which is not in verse. Let us turn to some lines suggested by the death of the late Senator Colquitt:

When we gaze at death through our emotions and relate it in our thoughts to survivors and their bereavement, it suggests inexorable calamity, irreparable loss, and is always sombre and sorrowful. But seen by the intellect, in the calm light and clear atmosphere of reason, and related in our thoughts to the departed, it often suggests gain and glory and it seems grand and beautiful. Thus may we look at it on the present occasion. For a few moments let our hearts be still, our eyes be dry; let our regrets be moderated and our sympathies restrained. Behold death as a beneficence — a benediction! There is no felicity greater, no fortune better, than to be old enough and good enough to die. This is the true end for all to aim at; for all to pursue from the beginning to the close of life. To be good, and to become old in goodness, is the interest, as well as the duty, of every one to whom the privilege of so doing is accorded. He who succeeds in this has true success, and needs no other, for in this, everything worthy of permanent estimation is comprehended. Whether his sphere of duty be high or low, wide or narrow, easy or difficult, he who fits himself to his place, fills it, meets its responsibilities and discharges its obligations, persevering faithfully through the spring and summer and autumn of life, failing not till winter comes, is ready to die. And his death, viewed in the radiance that streams upon it from his finished life, is beautiful.

Your own minds will make the right application of these remarks to the statesman, the soldier, the patriot, the citizen, the neighbor, the friend, the great Georgian, whose ashes are now here to honor by their solemn presence for a few brief hours the capitol of his native State. With the waning of one more moon, his years would have numbered three score and ten; nor was he less mature in goodness than he was in age. He, if any man, was qualified to die, and was eligible to that invisible convocation, the celestial senate, which no candidate can reach save by passing through the Valley of the Shadow of Death.

Judge Bleckley's poem next noticed would probably touch more hearts than anything he has written. It appeals to the poor and the wretched. The vast majority of men are always in the first state — poverty. All occasionally experience the second — wretchedness; for never beat a heart not sometimes bowed down. To all such, the sentiment — the sweet and inex-

pressibly tender and touching sentiment — in this little poem of triplet stanza is refreshing. He calls it

PRAYER.

The poor can most devoutly pray;
Who want for bread can truly say,
"O, give us daily bread this day!"

In vain the rich, with full supply,
To pray like wretched want may try:
If want were not, all prayer would die.

Where every bliss beside is rare,
And hearts are threatened with despair,
Is felt the sweetest bliss of prayer.

Thank God that those in sorest need
Are best prepared to pray and plead:
That they can pray, indeed, indeed.

To turn from grave to gay: Judge Bleckley stood on Broadway and looked at the ever-flowing human currents. In verse he asked whence they came and why they hurried ceaselessly. And this was his answer:

To judge your purpose by your speed,
It must be something great, indeed;
'Tis surely not a rash surmise
That life eternal is your prize:
No meaner aim, methinks, could you
With ardor such as this pursue.
And yet, alas, if truth were told,
The most of you are after gold.

Judge Bleckley's longest poem is on Catoosa, written in 1875. The verse flows easily and the rhythm is good. It contains nothing of the didactic, nor any special beauty of thought. It is rather descriptive of Catoosa Springs.

A sweet little poem, well worth preserving, is:

OCTOBER.

The time is very nigh
When summer leaves must die;
Perchance, too, you or I.

The Autumn's verge is crossed,
And soon by wind and frost
Will leaf and life be lost.

What life shall stay or go,
No wisdom here below
Is wise enough to know.

While you and I survive,
While both are yet alive,
Let Love, unwaning, thrive.

Oh, be it never told
That, like the year grown old,
Our later love gets cold.

This little poem, of peculiar meter but perfect rhythm, reminds us of "the melancholy days," as Cowper was wont to call them; when the leaves are falling and the golden rod blazing and the chestnut burrs opening. It produces on me a sensation beyond expression. In some inexplicable way, it suggests the everlasting antitheses of life and death, time and eternity.

Tennyson's "Locksley Hall" is famous the world over; possibly immortal. And yet I make bold to say that "Locksley Hall," while of greater length and more pretension, is not, as a whole, one whit better poetry than what Judge Bleckley has written upon a kindred theme. It is called

UNEQUAL MARRIAGE.

He has thy hand, the altar vow
  Has made that his forever;
But not thy heart, for it will bow
  To his dominion never.

Thy spirit still will soar aloft—
Still keep thee far above him;
And though he claim thy pity oft,
Yet never canst thou love him.

His lot is hard, but harder thine,
Half-wedded, gifted woman;
For thou art only not divine,
And he is—only human.

On reading these lines one recalls, by contrast, those from "Locksley Hall":

"As the husband is the wife is; thou art mated with a clown,
And the grossness of his nature will have weight to drag thee down."

In direct contrast is the sentiment in Bleckley's lines:

Thy spirit still will soar aloft—
Still keep thee far above him.

Which of these is true? Alas, let the miserable instances answer, where spirit, gentility and refinement in the person of a born lady, have been yoked with grossness, stupidity and brutishness in the shape of man. It is the exception when, in such cases, the woman's spirit "still will soar aloft."

"The Bride of Hope," "Mountain Flowers," "Cæsarism," and "Mother" are three shorter poems, the latter founded on this incident: A wounded boy, carried from the battle-field, kept begging for his mother. That was all he could say. When asked to name his regiment, he could only answer "Mother." They never knew who he was.

Judge Bleckley's writings — even his judicial opinions — show a fixed propensity to combine the poetic and the humorous. This is seen particularly in a little poem which is unique in humor, bright in conception, and happy in the semi-punning use of quasi-legal phrases. It reminds one of Dean Swift's defini-

tion of wit: "The discovery of the unexpected relations of ideas." He calls it

LAW LOVE.

The burning of a man's abode
Is punished by the Penal Code,
  With loss of life or lands;
Then, surely, that offense, more dire,
Of setting all his heart on fire,
  Fit penalty demands.

Dear, guilty girl—though guilty, dear—
The plaintiff cites you to appear
  In presence of the parson;
(He grants that you may fix the day),
To answer in the usual way,
  This last aforesaid arson.

Do not your tender guilt deny,
But own it, darling, with a sigh;
  I long for judgment by confession:
Do not affect the law's delay,
And force me still to plead and pray;
  Concede my right, and yield possession.

Those who have read the poem which I next quote* have doubtless wondered whether its inspiration was really a phantom or flesh and blood. All know the tendency of a lover's heart to idealize the one adored. In this poem there is to me something delicious. Reading it, I can almost hear the swish of unreal skirts, and see the drapery of spirit hair falling over ghostly shoulders of invisible alabaster, and feel the light of phantom eyes peering through mystic air. Has there not come into the life of each of us a dreamy vision akin to that which the learned judge must have seen through the muse's eyes when he wrote "The Phantom Lady."

One of his longest poems is entitled "Two Cities." In the mere mechanism of rhetoric one is struck by its fine antithesis.

*See page 67.

On a subject which most men think upon, especially in later years, and which all men must experience, it will appeal to all classes of readers. All flesh, we know, inhabits first one then the other of these cities. *We believe* that we shall yet dwell in the third — the city of C. We believe; for, as our poet says, "faith is not knowledge."

If this falls under the eye of one who is not interested in his other poems, let him turn to this and read it entire. It is one of his very best. Nay, few of its kind in the whole realm of poetry equal it. These are strong but deserved words. Observe its unbroken rhythm, its unconscious mysticism, its suggestion of sincere agnosticism, its deft personification — its urbanizing of the three realms — life, death and the world beyond both. At one of those times which come now and then into the life of each, when a shadow from the other world falls across our path and shrouds our hearts, who has not felt the infinite pathos suggested by these closing lines:

> The day is no better bestowed than the night,
> And darkness is precious as well as the light.

It is not my purpose to speak of Judge Bleckley's orations, essays, judicial opinions, or the incidents of his life. We are now concerned with his poetical side only.

But we find prose and poetry sometimes closely related. For instance, in 1886, he delivered before the literary societies of Mercer University an address on "Truth in Thought and Emotion," concluding with the poem on "Cucumbers," in which, after apotheosizing this vegetable fiend, he contradicts in the following counsel, the springtime warning of many an anxious mother to her wayward boy:

> And eat enough; with such a victual
> The danger lies in eating little.

So, a commencement address at the University of Georgia on "Truth in Conduct," he concluded with a little poem on

"Rats as a Type of Energy," the punning in whose first stanza reminds one of Hood's "Faithless Nellie Gray." As a bright curiosity it is worth quoting:

You lie in your chamber, just under the attic,
On a bed of nocturnal probation,
And listen to rats—those beings erratic
Engaged in the ratification
Of mischief they've cunningly done on the sly,
And met in convention to rat-ratify.

Two of the most picturesque characters in our history are Alexander H. Stephens and Robert Toombs. Each was unlike any other. Their individualities are clearly outlined in the perspective of the most dramatic (was it not the most tragic?) period in the history of this republic. I cannot linger here; to Georgians, at least, the fame of each is an ever-freshening glory.

In poetry, as genuine as was ever graven upon his waxen tablets by the friend and protegé of Mæcenas, Judge Bleckley has embalmed each. Here are his lines on

STEPHENS.

Of yoeman blood, but yet of noble birth,
By genius linked with Burke and Chatham's strain,
Self-noble, too, by stainless moral worth
And manly work of hand and heart and brain;
He gave to heaven a fruitful life on earth
Of purpose, patience, labor, born in pain.
In statecraft learned, in counsel prompt and wise,
In speech commanding, clear, incisive, strong;
In action, cool and careful of the prize;
He hated rashness as he hated wrong.
Before his searching, calm, prophetic eyes
Did future woes in present errors throng.
His State and country were to him the same,
And both he served with love and faith and fame.

Compare this with his exquisite, unapproachable lines on

TOOMBS.

A lion harmless to the weakest lamb,
Though fiercely scorning like a lamb to be:

His ruling passion to be wild and free
As winds and waves, with no compulsive calm
Save God's. To God alone he tuned the psalm,
Or bowed the head, or uttered prayer or plea;
To none but God he ever bent the knee,
Or incense burned, or offered bull or ram.
His mind was Space and Time in Spirit swung;
His brain was Reason's self encased in bone;
His speech, the Summer Storm with human tongue—
A storm of logic thundered from a throne.
O'er all our hearts his scepter might have hung
Had he but learned to tame and rule his own.

You will pardon me if I diverge from the strict line of this paper to repeat an unsurpassed specimen of necrological writing. It is not verse. It is only quasi-poetical. But its style is so lofty, its sentiment so exalted, its diction so pure, its choice of words so happy, its pathos so dignified, its emotion so calm, the virtues of the father so modestly delineated, the son's affection so delicately shadowed forth and his grief so gently and unobtrusively suggested, that it is well worthy to be ranked with the strongest essays, the ablest opinions and the sweetest poems of this rare man. It is

HIS FATHER'S OBITUARY.

Died, on the 5th of September, 1870, at his home near Clayton, Rabun county, James Bleckley, in the sixty-eighth year of his age.

He was a native of Lincoln county, North Carolina, and removed from thence to Rabun in 1826, where he resided until his death.

He was bred a farmer, and that remained his chief vocation through life. At intervals he served the public as sheriff, clerk, ordinary, and judge of the county court, offices conferred on him, at successive periods, by the people of Rabun. In 1837 he volunteered in the military service and as a first lieutenant of cavalry made a campaign in Florida against the Indians, under Brigadier Charles H. Nelson. When the Blue Ridge Railroad Company was organized he was elected one of the directors, and was still a member of the board at the time of his death.

He had great solidity of personal character, and its basis was Truth. In word and in deed he was a *true* man. Such was his estimation of veracity that he taught his children, as a standing precept, that theft,

criminal and degrading as it is, is less abhorrent than deliberate falsehood. The reason he gave was, that society has more defenses against the violator of property than it has against a violator of the truth, and that to reform the tongue is a more hopeless task than to restrain the hand.

He was not a member of any church, but he indulged a heartfelt charity that embraced all orders and denominations, not of Christians only, but of men. His sympathies were not limited by Protestantism nor by Catholicism. He felt as a brother towards the followers of Moses and Mahomet, as well as towards the disciples of Jesus, and he counted himself no stranger to publicans and sinners. He cherished a broad and beautiful toleration, grudging to no man the exercise of unrestrained opinion or of uncontrolled worship.

Warned for weeks of his approaching dissolution, he expressed a modest confidence in the mercy of God, and, without alarm, waited for death to come. When it did come, he was engaged in cheerful conversation and expired peacefully, with no visible sign of pain.

Thus passed away my beloved father.

Judge Bleckley has given us the shortest and simplest analysis of the English alphabet. It is partly in prose and partly in verse. The more one reflects on these lines the greater grows the astonishment that any but a trained student of such matters should have so accurately analyzed the alphabet, and collated its idiosyncrasies. It is well worth a philologist's study, and no one ambitious of critical linguistic learning can afford to ignore it:—

THE ALPHABET

consists of five letters, five only; and these, by the aid of consonant signs, are carried through twenty-one variations. The first letter is O. It has no variation. The second is I. It has one variation, which is Y. The third is U. It has two variations, Q and W. The fourth is A. It has four variations, H, J, K, R. The fifth is E. It has fourteen variations, in eight of which the E sound is full and strong, and in six quite thin and weak. The eight are B, C, D, G, P, T, V, and Z; the six are F, L, M, N, S, and X. Summing up, we have one O, two I's, three U's, five A's and fifteen E's. Of the whole number O is $\frac{1}{26}$, I $\frac{1}{18}$, U $\frac{1}{9}$ plus, A a fraction less than $\frac{1}{5}$, E $\frac{1}{2}$ and two over. Properly arranged the twenty-six characters would stand thus: O, I, Y, U, Q, W, A, H, J, K, R, E, B, C, D, G, P, T, V, Z, F, L, M, N, S, X. This would place first the solitary O, and after it others, parents and progency, in due order, the related numbers fitly grouped together.

In verse he summarizes thus:

The lively things at spelling-bees,
The things that most instruct and please,
Are not the words, but A, B, C's.

The busy bees, when they have met,
Must take a look at the alphabet.
To see it in its legal view
Is now the thing we have to do.
On law of letters we must draw
To give the letter of the law.
In O, I, U, A, E, is found,
Condensed, yet clear, each ruling sound.
In every case the lawyer quotes
As good sound-law these five head-notes.

Of one of these, the selfish O,
Its lonely note is all we know;
No more than once, to keenest ears,
A tone or trace of it appears.
A bachelor sound it is, that wails
The doleful fate of single males.
No wonder, in their dismal woe,
The tune they sing is only "O"!

Not quite so lone and chill is I,
Its one companion being Y.

And twice as tender must be U,
Which pairs with W and with Q.

And wider still expandeth A,
It spreads to R, H, J, and K.

But far more facile, frank and free,
That generous note, the peerless E.
It leans to B, C, D and G,
To P and T and V and Z;
And then, with slight and gentle stress,
It touches F, L, M, N, S;
And, clinging still, till silence checks,
A whispered kiss it gives to X.

After Judge Bleckley's resignation of the Chief Justiceship, nearly a year ago, he retired to his mountain home in Clarkesville and announced his permanent retirement from the profession of law. Here it was he wrote and gave to the public his "Farewell to the Law," the concluding lines of which remind us of the better specimens of his poetry.

This brings us to the last composition noticed here.

The Judge had been once before on the Georgia Supreme bench — a hard-worked, over-crowded, under-paid court — for several years, and was tired. He resigned and read from the bench this, his last opinion during his first incumbency, which will be found reported in the 64th Georgia, 452, and is entitled "In the Matter of Rest."*

For its length it is Judge Bleckley's best production. The last stanza should be burned into the heart of every young man. It is the essence of common sense, the conclusion of human experience, the final deduction of philosophy, and the ultimate dogma of religion.

Is apology needed for traveling out of the beaten track as I have done to-day? Is it not well to preserve in our permanent records something of the foremost living Georgia member of our noble profession? Would we not now highly prize similar evidences of the mental work and characteristics of Lumpkin, and Nisbet, and Warner — that triumvirate of judges who moulded Georgia's judicial opinions in the halcyon days of Georgia lawyers?

Are we not too careless of the fame of our great men? Stephens will live forever in his "War Between the States," that masterly vindication of the South's position in the great conflict. Hill, the mighty, the defender of the Constitution and the Union, will live in his "Notes on the Situation" and a few great speeches which fortunately have been preserved. The rugged honesty and strong sense of Warner is perpetually embalmed in his Supreme Court opinions. The classical learning, the brilliant

* See page 27.

imagination, the extended legal research, of the first Lumpkin is similarly recorded. So, too, are those masterly judicial opinions of Nisbet, clear as a sunbeam, unsurpassed in strength of statement, freighted with a treasure of legal lore.

But after this what can be said? What has become of those majestic tornadoes of commingled eloquence and logic which swept the forum and the hustings when Toombs lifted up his voice? Where are the sermons of Pierce, the incarnation of grace, the most perfect specimen of manly beauty, whose unsurpassed oratory was the apotheosis of human speech? Where are Dooly's wit, Berrien's oratory, Forsyth's speeches, Cobb's statesmanship — the prowess of many more whose glories are forgotten and whose names are fast becoming fading memories?

Gone, all gone, save here and there a fragment; just enough of the ruins to suggest the magnificence of the temple destroyed.

Our great men owe it to posterity, if not to themselves, to preserve the records of their works. Our smaller men owe it to the profession to which we in common belong, to aid in perpetuating the fame of the greater. If we cannot help build the temple of Georgia's fame, we can at least lift up here and there a candle by whose aggregate light, though singly feeble, those who follow us may be enabled to see somewhat of the temple's glory.

And so, to-day we place upon the permanent records of this Association, whose reports are sought after by libraries all over the country, and whose few remaining volumes, a century from now, will be worth their weight in gold, a half-tone sketch of one phase of the intellectual life of him who, leaving active life without a blot of wrong upon its pages, sits down at the foot of the mountains in whose shadow he spent his boyhood days, mindful of the advice of Cicero who recommended to old age *otium cum dignitate,* followed by the respect of the public, the admiration of the bar, and the love of all who know him; who, tried by the test prescribed by the Sinless One, may enter the Kingdom of Heaven; for, in guilelessness of heart and gentleness of life, he is, indeed, a little child!

POEMS

[The following collection of Judge Bleckley's poems is substantially that of Judge Akin published in the twelfth Georgia Bar Association Report (1895) as a part of the foregoing article. Several other poems appear in the different articles published herein.]

ON GENERAL HENRY L. BENNING.

Poor Southern eyes, already red
With weeping for your noble dead,
If tears are left you yet to shed,
Give some to soothe this latest woe—
For gallant Benning let them flow.

Ah, death that spared him in the fight,
Has struck, in peace, a Georgia knight—
As knightly as the proudest lord
That ever lifted lance or sword;
No truer, braver chief than he
Adorned the ancient chivalry.

For firmness in the battle shock,
His comrades said he was a *rock;*
Old Rock, they said, and his command
(Whoever fled) were sure to stand;
And never was that hope betrayed
By Rock himself, or his brigade.

The tricks of war he did not learn;
In stubborn valor, grim and stern,
He trusted as the pious priest
Reposeth in the blood of Christ;
To him it seemed no fight could fail
If not a single heart would quail.

When vainer warriors would assume
The wreath, and star, and sash, and plume,
He moved among his soldiers gray,
As plain and unadorned as they;
Nor cared to shine, or to excel,
Except in doing duty well.

In peace it was his lot to die;
In peace, O, may his ashes lie!
And sweetest peace, while ages roll,
Attend his noble, manly soul!

OMNIPRESENCE.

We deem them more awake than we:
Our hope and faith have eyes to see
    Their disembodied shapes as far
    As to the most exalted star;
    And still we feel how nigh they are!
To spirit-essence, as to thought,
All places are together brought,
For distance, to a soul is nought,
    In sooth we well may wonder why
    We tell departing friends good-bye!

To go! to stay! The two are one—
As we may think of yonder sun,
    Explore the sky, the sea, the land,
    And not remove from where we stand,
    Nor stir a single grain of sand.
We need not fear our loved and lost
Have to a distant country crossed,
Or on dividing waves are tossed;
    We may be sure they linger here;
    That if remote, they yet are near.

MEDORA.

But life immortal thus to bear—
To be forever everywhere,
    Is not enough — will not suffice:
    Existence is but half the prize;
    In vain the dead awake, arise.
If bliss, while all the ages roll,
Is lost or missing to the soul,
'Tis happiness completes the whole:
    To know of which must needs be read
    The record left us by the dead.

*Medora, now to thine we turn,
And, lo, how all the letters burn!
We see some grace or virtue shine—
Some likeness to a life divine—
Some nobleness—in every line.
And, first, (how precious is the word!)
The truthful writing doth record,
She loved, and, foremost, loved the Lord;
And then, with passion thus refined,
She loved her neighbor and mankind.

Affection was the fount and force
In which her conduct had its source:
Of self she took but little thought;
For others' bliss she daily wrought
And often blessed, unseen, unsought
Not long or loud did suitors plead,
She gave a gift or did a deed
On slight and silent hints of need;
Her happiness was at its tide
When others' wants were best supplied.

And hers was love adorned with light,
She made the stream of blessing bright,
She knew how gracious is a grace
Bestowed with manner, word and face
Befitting person, time and place.
Her bounty reaching lowest down,
Was never darkened by a frown,
Nor hardened with an icy tone:
Her tact in goodness so excelled,
The "poor and proud" were not repelled.

While health and fortune cheered the day,
She gave her very self away;
Her air, her look, her laugh, her tone,
To those on whom her favor shone,
Seemed less as hers than as their own.
The rudest guest, when at her board,
Could be, or seem to be, a lord;
And cowards might confront a sword;
So pleased were all—so much at ease,
Each felt that he, himself, could please.

* The wife of the late Colonel James D. Waddell.

When trouble came, and health declined,
A light less glad, but not less kind,
Intense with holy heat, was shed
Through all she did, or looked or said,
Withdrawing not till she was dead.
Remembered now, it seems to pale
Not more than solar beams must fail
When shaded by a sable veil,
Or when the sun, in nightly swoon,
Is seen reflected from the moon.

THE FARMER.

The farmer, be he poor or rich,
As high as prince, or low as peasant,
His calling still is one in which
Poetic themes are ever present.

Yet strangely does the farmer deal
With forms of rare poetic beauty;
Their high enchantment not to feel
He deems a kind of rustic duty.

Sun, sky, and cloud, frost, wind and rain,
In one brief word he groups together—
Their worth to cotton, grass and grain
Is all included in the weather!

The seasons which to most impart
A hint for smiling, or for weeping,
Awake no passion in his heart,
Except for planting, tilling, reaping.

Diurnal changes — night and day,
So rich to sight and contemplation—
Pass him, unheeded, save to sway
His meals and rest and occupation.

The very crops he loves to rear—
Poetic essence fills their being—
The stem, the leaf, the bloom, the ear,
All teem with beauty past his seeing.

Ah! noble is the farmer's toil!
Its fruit a priceless boon and blessing;
But what he gathers from the soil,
Is not most worthy of possessing.

A subtle beauty, sweet and fair,
Which nothing can subdue or shatter,
Forever floats on earth and air,
And clings to every shape of matter.

This beauty courts the farmer's eyes,
He spends his life to it the nearest;
And all he wants to make him wise,
Is but to see and hold it *dearest.*

BROADWAY.

From early dawn till after dark
A current flows towards the Park,
And full as fast, the other way,
A counter-current to the Bay:
This mighty stream, from side to side,
Is thus a double living tide.

Ye restless ones who, to and fro,
In such wild hurry come and go,
Who run in haste both up and down
This roaring river of the Town,
Say what it is ye all do seek,
From day to day and week to week;
What treasure of the heart or mind,
Ye seek, but never seem to find?

To judge your purpose by your speed,
It must be something great indeed;
'Tis surely not a rash surmise
That life eternal is your prize:
No meaner aim, me thinks, could you
With ardor such as this pursue.
And yet, alas, if truth were told,
The most of you are after gold!

FAITH.

Cast out into space
For life and for death;
No ultimate base,
No bottom beneath,
No limit or bound
Above or around;
No wall at the side
Or roof overhead,
No cover to hide
Me, living or dead;
No refuge for thought or for sense,
Yet I will not despair
As I drift through the air,
Afloat in the boundless immense.
In the depths of the night
Cometh faith without light,
Cometh faith without sight,
And I trust the great sovereign unknown;
No finite or definite throne,
But the infinite, nameless, unthinkable *ONE*.

I cannot, nor need I, define
The blessing he keepeth in store;
His purpose I know is divine,
And why should I care to know more?
The *what* and the *where* and the *when*
Must needs be uncertain to men;
For the future, if distant or near,
Lets none of its secrets appear.
No definite hope may endure,
No favorite bliss be secure,
Not even existence be sure,
But the something that ought to befall
Will happen at last unto all.

THE BRIDE OF HOPE.

The Future, pure and peerless one,
That seemeth nigh while still afar,
By day more splendid than the sun,

By night more precious than a star;
Fit bride for Hope, in truth, is she,
The pure and peerless Is-to-be.

And Hope, alive to all her charms,
Holds out his fond, impatient arms,
And strives with over ardent haste,
To clasp her unsubstantial waist;
But ever does the maid retire,
And laugh at Hope and his desire.

More constant still because denied,
Hope deems the nuptials must be near;
And so he woos no other bride
But waits for her from year to year;
Of all blind lovers most absurd,
To think his bliss is but deferred.

He does not know and cannot see
That she, the charming Is-to-be,
Within another world abides,
Apart from this where Hope resides,
And that if into this she came
She would no longer be the same.

FEAR.

It seemeth fit that I resign
My will, O Lord! — my will to thine.
But how can I renounce my breath,
Relinquish life and welcome death?

II.

My life, myself, they seem as one,
Nor can I feel that they are twain.
Thy will is death. When it is done,
Will self — my vital self — remain?
Forgive me if, with reverent fear,
I urge a theme as this so dread;
My first concern my foremost care,
Is, shall I live when I am dead?

And, Lord, do not regard me less,
  And let it not augment my woe,
That I the naked truth confess,
  Which is, *I know I do not know.*
Affirm I not, nor can deny,
  Nor can at doubt or faith arrive —
I know not what it is to die,
  Or what may perish or survive.
And hence the fear that rises first;
  It bodeth not of peace or strife,
Of being blest or being curst,
  But only of the lapse of life.
It hints that here, perchance, is all;
  That I am of but little worth—
That out of being I may fall,
  Uncared for, when I quit the earth.
A thousand times the hint I spurn,
  And strive its whisper to defy;
But still the question will return,
  What happens when we come to die?

III.

Another fear my heart assails;
  Another peril shows its frown,
  And bears my feeble courage down.
Suppose existence never fails,
  Will mine be one of pain or bliss—
  A worse or better state than this?
Ah, what would be the good or gain
  To sense, emotion, will or thought,
If fall I into deathless pain
  Instead of falling into naught?
And here, again, my sight is veiled;
I know not if I be impaled
  On some foregone adverse decree,
    Or what to dread, or what expect,
    If I am free, but not elect,
  Or what my danger still may be
  If I am both elect and free.
With holy law, unholy fact,
    My own misdeeds and Adam's taint,
With sins of blood and thought and act,
    What wonder if I fear and faint?

IV.

I see, on either hand, a cave
That opens downward through the grave.
Ten thousand heavens were in vain,
For hell may be a hell of pain,
Or that which seems a lower deep—
The hell of everlasting sleep;
And thus the chance of bliss for me,
If lots were cast, is one in three.
The loss of self, or loss of peace!
Twin perils now to me so nigh!
Until they cease, or seem to cease,
I pass all minor dangers by.

V.

Between these hells of sleep and flame
I do confess myself to blame:
Like Adam, I have disobeyed,
And I, like Adam, am afraid.

CATOOSA.

Two miles from car, and steam, and rail,
Catoosa hovers in the vale—
A wild, secluded, shady site,
Where three romantic dells unite.
Up these to East, and South and North,
Three idle, rustic roads wind forth,
And through the vale, from East to West,
The waters of a brook are pressed.

Anigh the brook, on either marge,
Full fifty living springs discharge.
'Twould seem that nature's healing craft
Had here put all her drugs on draft,
And bidden, from the earth outpour
Her precious pharmaceutic store:
Profusely offered, and in haste,
Enough for use and much to waste,
Her wealth of hygienic flood
E'en medicates the sand and mud.

Some chemic Muse alone could sing
The properties that mark each spring—
Their virtues, and (if such) their faults;
Their metals, acids, gases, salts;
Suffice it now some few to name—
A few best known to common fame:
Magnesia, iron, alum (prime),
Soda, sulphur, iodine and lime.
The chief are these, though many more
Hath science found, and counted o'er.

And here the kind, benignant Jove
Hath spread a wide, Arcadian grove.
Beneath its boughs, in fount or pool,
The waters keep forever cool;
Broad walks that serve each spring to find,
Along the surface turn and wind;
And here and there, where seemeth best,
Convenient seats invite to rest;
And those who seek embowered ease
May bowers find among the trees.
For pleasure, health, or e'en for love,
No spot excels this leafy grove.

To northward mounts a swelling crest,
With slopes inclining South and West;
Adown the slopes extends a lawn,
In light and shadow like the dawn.
In native forest trees arrayed,
With planted growth for deeper shade,
All thick with branches interwove,
It stretches down and joins the grove.

From highest angle of the lawn
Two nearly equal lines are drawn,
The shorter, by abrupt decline,
Descending to a lower line;
The three, rectangled, well declare
Three faces of a hollow square.
Along these lines, and fronting on
Three shady margins of the lawn,
Is reared in light and graceful style,
Catoosa's architectural pile.

You would not deem such vast hotels
Were here among the hills and dells,
Or that so many cottage walls
Were group'd about hotels and halls.
Full half a thousand guests, at least,
Might lodge and lounge, and dance and feast;
And room there is for all to play
At billiards, bowls, and light croquet.

For station take the chief hotel,
And view the charming landscape well.
A castle, stript of roof and crown,
Its walls oblong, but broken down,
Some more, some less, except the grand
Old corner turrets left to stand—
Such castle if of vast extent,
Might well the valley represent.
Three thousand paces over crossed
Would scarce its outer lines exhaust.

Two hills in front as towers stand,
And two in rear hold like command;
The four suggest the turrets tall
At angles of a castle wall.
Between each pair a gap is cleft.
Before, behind, on right and left.
The two cut low, in gashes deep,
Their faces bold and bare and steep,
Enclose the narrow, rugged seam
Along which flows the valley stream.

Look near, and all is green and gay,
And fresh and bright, as middle-May.
Ah, *here* is life! the eyes contrive
To gladden sight with things alive.
To every quarter turn your head,
And naught appears that seemeth dead,
Save stubble stems and sand and rocks,
And gathered wheat disposed in shocks.
On all the till'd and tillage ground
Few dead or dying trees are found,
Not half a score, perhaps if you
Did search the valley through and through.

Life, *life,* abounds, both seen and heard,
For every bough supports a bird,
And warbled songs your ears delight
From morning till the fall of night.
Not even then does feathered strain
Subside till morn is up again;
When eve is dusk and soft and still,
Then cries the plaintive whip-poor-will—
A minstrel of the night and wood
That cheereth not, yet doeth good.

Ye favored ones to whom are lent
Both time and money to be spent;
Yet, who in crowded cities meet,
And swelter in the dust and heat;
And, hence, are vexed—contented not,
Despite the bounty of your lot,
Come hither to this cool retreat,
And make your summer bliss complete.
Come *now,* for fear a change of state
May make a future day too late;
Ye cannot look behind the veil
And see when purse or life may fail;
If fortune from your grasp should fly,
Or you, by some mischance, should die,
Your never having been here yet,
Would prove a long and last regret.

And, likewise, ye who, having wealth,
Can use it not for lack of health,—
Whose blood and nerves and vital force
Are failing in their wonted course,—
Who need, to mend—perchance to live—
The aid that healing waters give—
Come, *come,* where fifty fountains flow,
With each some virtue to bestow.

And ye who are in body whole
But pine with sickness of the soul;
Who droop, despond, and know the pain
Of wearing out a life in vain,—
Who muse and murmur, gaze and sigh,
And vaguely wish that you could die,—

Come here and find a quick relief
For all your felt or fancied grief.
Ye, too, a large, laborious train,
Who strive some leisure time to gain,—
Who, lacking pelf, essay to foil
The ills of want by honest toil,
In office, store or shop confined,
O'erspent in muscle and in mind,—
Who never let exertion fail
Till eye is dim and brow is pale,—
As soon as from your little hoard
The needful cost you can afford,
Let brain and body, overtaxed,
Be here disburdened and relaxed:
These woods and waters, breezes, balms,
Will make you skip like kids and lambs.

And ye who are already gay,
As fresh and light as morning spray,—
Whose eyes shoot sparks at every glance,
Whose feet are restless for the dance,—
Whose tongues are laden high with words,
As careless as the chant of birds;
And who, while bounding pulses beat,
Feel youth is strong and life is sweet,—
Assemble here, in merry throngs,
For mirth and laughter, music, songs,
And dance and feast, and all the cheer
That wait on sport and fancy here.

And ye, discordant with the last
Who represent the awful past:
The staid and sober, grave and wise,
Who frown at folly, and despise
As vices close allied to crimes
The levities of modern times,—
For even you is here a space,
So uncontracted is the place,—
So widely spread the ample bounds
Of halls and cottages and grounds.
In public, when it doth behoove,
You may appear, look on, reprove,
And then, secluded, may retire
To any distance you desire;

No narrow limits cramp your will
You may act sage or hermit still.
E'en should it be your sad conceit
To only meditate and eat,
You here will goodly diet find
For both the stomach and the mind.

Bid silence now make end of speech,
And mutely let an arm outreach
And beckon with persuasive hand
To all the lovers of the land;
Or if a vocal chord be stirred,
But whisper every muffled word;
For lovers are a tender brood,
And cannot bear a sound that's rude.
With breathing low as breath can fall,
I murmur thus to them a call:
Ye multitudes who know no ease,
Whose health is but a slow disease,
Whose wealth is but a beggar's plea,
Whose happiness is misery,
Who, what to do, or where to go,
Or what you want, do never know,
Here, *here,* you may obtain repose;
Yea, rest is here for belles and beaux.

CÆSARISM.

Imperial Cæsar of the West,
Appear and make thy country blest;
The people wait in hope and fear;
Delay thou not—appear! appear!
Like Hebrews in the days of Saul,
We ask a king, a king for all.
No longer caring to be free,
We bow the spirit, bend the knee.
Whoever o'er Columbia reigns
Will have the gem of earth's domains;
Such splendid empire is there none,
From rising unto setting sun.
Three thrones have here a lost domain,
The thrones of England, France and Spain;
United now are all the three,
And look for future prince to thee.

Come, quickly come, and hold the helm,
In State so vast — a matchless realm.
In thee, great Captain, will we own
A true restorer of the throne—
The throne in bitter strife hewn down
By brave old Captain Washington.
Successor thou, if prayers be heard,
To George of England, George the Third.

MOTHER.

One of the wounded, as he was being carried from the cars, implored those around him to send for his mother. That was all he could say. No name, no regiment, nothing — it was "mother." He was shot through the lungs with a minnie ball.

"My mother!" feebly sounded
From his lips so thin and white;
No question we propounded
Could other words excite—
We but knew that he was wounded
In the late terrific fight.

In vain, with kind intention,
We sought to learn his name,
Or press'd him but to mention
The State from which he came—
He seemed to give attention,
But his answer was the same.

"My mother! Oh, my mother!"
This oft repeated call
Was all our dying brother
Could utter in his fall;
No thought of any other,
His mother—she was all.

We know not who or whither
May be the gentle one
That sent to perish hither,
This noble-hearted son;
But, Oh! may God be with her
When she hears what war has done.

MOUTAIN FLOWERS.

Among steep rocks where wild deer climb,
And waters leap in flowing,
Are always, in the summer time,
Sweet mountain flowers growing.

To them are purest dews allowed—
The precious early draining
From patches of unfinished cloud,
Too light and thin for raining.

A rainbow that the torrent weaves,
From spray and beams of morning,
Paints all their tender tinted leaves,
And gives them rich adorning.

The fragrance of the upper air—
The incense nearest heaven—
Perfumes them with an odor rare,
By breath of angels given.

To rocks and rainbow and the clouds,
Retreat, in sultry hours;
From shops and stores and streets and crowds,
Go up, and gather flowers.

FAREWELL TO THE LAW.

Farewell, my liege, beloved and long, long-served, good-bye,
My leave I take and forth I go with wept and sobbing sigh,
Which, now condensed to pensive dew, is trembling in my eye.

How oft in legal combat met have I, at low or lofty bar,
Contending suitors helped to wage or ward the fierce forensic war,
When rushed the battle horses and flew the battle car.

For more than one full decade, with pale, unsandaled feet,
In pure and spotless ermine I mused on Georgia's seat,
And righteous judgment rendered between the Tares and Wheat.

My grand majestic master, vice-gerent here of God,
I quit thy special service, but stay beneath thy rod,
An old and humble servant, uncovered and unshod.

TWO CITIES.

The one is a city of life,
Of labor and love, of anger and strife,
Of weeping, and laughter, and jest;
The other — a host without breath,
A city of silence and death,
A city in peace and at rest.

Vast cities are these, are they both, as you see—
The city of A and the city of B;
And the reason they lie
To each other so nigh,
The sole reason why,
Is, the people of A are destined to die,
And the people of B await them hard by.

No rivals these two, but the dearest of friends,
Yet each with the other for numbers contends;
In spite of their efforts at keeping away,
Some scores of the transient sojourners in A
Transfer their abode into B every day.
Indeed, whosoever will follow each street,
And the lanes, and the alleys, to where they all meet,
And make his survey of the city complete,
Will find that Life's avenues, crooked or straight,
At first or at last, either early or late,
All empty themselves through Death's open gate.

Quite handsome and fine is the city of A;
From suburbs to center so busy and gay,
Through half of the night and all of the day;
'Tis truly a wonderful place to behold;
Its wealth is unmeasured, its treasures untold,
It flashes with jewels and glitters with gold.

How costly is life, what countless expense,
To temper the blood and comfort the sense,

And nourish the mind and chasten the breast,
And keep the heart ruled in its stormy unrest;
But death unto all is offered so cheap;
There's nothing to pay for falling asleep,
Save closing the eyes and ceasing to weep.

In sheen, or in splendor, the cities must strike
Your thought as unequal and strangely unlike;
For one is a city whose mansions are found
Above, while the other's are under the ground.

How simple the latter will seem as you pass;
Some bushes and flowers, some ivy and grass,
To shelter the borders or freshen the sod;
Some fragments of marble, or marble in mass,
Inscribed with the virtues and names of the dead,
The griefs of the living, the tears they have shed,
Their hopes, and their trust in the mercy of God,—
Too dim and uncertain, perhaps, to be read.

Short panels of iron, or timber, or stone,
Enclose certain sleepers and keep them alone;
The family feeling, still soft and severe,
Presides at the tomb — its spirit is here;
Each bosom that bleedeth, each sorrowful heart,
Would group its own loved ones from others apart;
Exclusive, alike, are the humble and proud,
They cannot endure to be lost in the crowd;
In death as in life, man's self-hood will cry,
Abide you out yonder—Behold here am I.

Two cities we know, and some news we have heard,
By priest and by prophet, good news of a third;
The tidings they bring us we cherish as true,
But faith is not knowledge;—we know only two;
Full knowledge direct of the city of C
Seems not for possession by you or by me,
Till, parting from A, we have come into B.
Nor at this should we murmur, or sigh, or repine;
Man's weakness, as well as his strength, is divine;
The day is no better bestowed than the night,
And darkness is precious as well as the light.

CAUSATION.

[This poem, with the introduction was read by Judge Bleckley as the President's Address at the Eleventh Annual Meeting of the Georgia Bar Association, Atlanta, July 31, 1894.—Reprinted from Annual Report.]

INTRODUCTORY.

Gentlemen of the Association:

If I could realize my own ideal, whatever I produce would be in volume a fragment, in thought a volume. My model for all things that involve expression is condensed head-notes rather than expanded opinions. The labor of production should be done by the producer and not thrown upon the consumer. By labor I mean thought-work, not handicraft or alternate contraction and expansion of the muscles. A problem of first importance for the intellectual artist to solve is, how to put the most soul into the least body, how to represent the largest bulk of the immaterial by the smallest mass of the material. As I am no artist of any sort, of course I must fail, but attempts are educative, not only to those who make, but to those who witness them.

ADDRESS.

CAUSATION.

The laws of thought, which must preside
  In rightly judging other laws,
Make sure that Reason shall decide
  Existence was without a cause.
An antecedent purely naught
Has no admittance into thought.

Whoever seeks a cause for all
  Will vainly seek what none can find;
Causation has to such a call
  No answer for bewildered mind.
Within the whole must cause abide;
The sum of all has no outside.

Existence scan without control,
  And one of these must be its chart—
Eternal must have been the whole,

Or else a part has caused a part.
Causation, now confined to change,
Could thus have had creative range.

While every change must have a cause
The cause of change must be supreme
The pre-existing source of laws
That fetter things of less esteem.
Though subject must the sequent be,
All primal being must be free.

Applied to change, causation stands,
Full crowned with universal sway;
Applied to being, its commands
Beginning only could obey.
No sway of cause, no causal rod,
Could be extended over God. [Applause.]

TRUTH IN THOUGHT AND EMOTION.

An Address by Judge Logan E. Bleckley to the Literary Societies of Mercer University. Delivered at Macon, Georgia, June 29, 1886.

TRUTH IN THOUGHT AND EMOTION.

There is no life but thought and feeling. Whatsoever, whether act or substance, is not convertible, and ultimately converted into one of these forms of life is dead. Our sole business on earth or in Heaven is to think and feel, and cause thought and feeling in other beings. If we cross the Ocean of Death, not as ships in ballast, but as freighted vessels, we shall have on board thought and emotion — nothing else. And the value of the cargo in the port beyond will be measured by mass and quality, and the test of quality will be truth. It should be one object here, if not the chief object, to put up for export, packed in our faculties and character — in our mental and moral being, as much as possible of true thought and emotion, mixed with as little as possible of false thought and emotion. It follows that we should not, by our own fault, be narrow and contracted, intellectually or morally, for no one can have thought and emotion on a large scale, and of great worth, without a wide range of thought and feeling. We need breadth, both of thought and sympathy, and that sort of breadth which makes room for multitude and magnitude, number and degree, many and much. What we want with mental discipline and culture, is to enable us to have, so far as may be, many thoughts on many subjects, all of them correct, none of them low, and only a due proportion of them light or little. What we want with moral discipline and culture, is to enable us to experience in due degree of intensity, so far as may be, many emotions, all of them pure in their nature, and appropriate to the occasion, none of them vile, vicious or malignant.

Correctness of thought is conformity of thought to things, and of thought to thought. I have never met any person who believed he did not know that which he knew; but nothing is more common than for us to think we know what we do not. We never mistake our knowledge for ignorance, except perhaps

in extreme metaphysics, but we constantly mistake our ignorance for knowledge. And the remedy for this, so far as there is a remedy, is the practice of mental candor until it becomes a fixed habit, the cultivation of an intellectual conscience. He whose opinions are all convictions is as reckless, intellectually, as he is, morally, whose assertions are all categorical. Conviction has no more right to go beyond evidence and just inference, than statement has to go beyond conviction. A man should be hardly less careful not to deceive himself in thought, than he is not to deceive others by expression. It is as hurtful to truth to decide when we ought to doubt, as to doubt when we ought to decide. We should feel no reluctance to confess our ignorance, always to ourselves, and when circumstances call for it to others. The phrase, "I don't know," honestly and fairly used, humbles us, but when so used it covers much the larger part of truth. We should use it honestly and fairly, both to ourselves and others; always, however, remembering that we are not to deny, even in thought, the existence of a thing because we do not know of its existence. It is the lack of such knowledge that constitutes ignorance. This lack is the very stuff of which ignorance is made. If we knew all existences, taking the term as including both the actual and the potential, we should know everything, for there is nothing else to know. We have no more warrant for dogmatizing at random negatively than affirmatively. The forms of language force us very often to be dogmatic in expression, but this does not oblige us to be dogmatic in thought. If we attempted to communicate in discourse all the qualifications, and all the shades and degrees of qualifications, that we realize, or ought to realize in thinking, we should only perplex or mislead our hearers. It has been remarked that no one ever means precisely what he says, for no one ever says precisely what he means. Doubt is a state of mind proper to any high degree of uncertainty. It is a question whether anything is uncertain, in and of itself — whether all contingency is not in knowledge, none of it in the objects of knowledge. The so-called contingent events of to-morrow are, at this moment, uncertain to the whole human race, but if they

are known to God they have certainty relatively to him. He never doubts. Whether we will or not, we must live with uncertainty and die with it. Relatively to us, it extends over a part of truth as surely as certainty does over another part. To doubt too much is to carry over, by self-deception, the certain into the uncertain; to doubt too little, is to carry over, by self-deception, the uncertain into the certain. Not to do either, should be a matter of solicitude with every lover of truth. The repose of conviction is very desirable, and very seductive. To doubt is never pleasant, often painful, sometimes agonizing. And, in so far as this prompts to inquiry and urges us to decision, it is very useful; but when it induces us to decide without inquiry or evidence, or without the proper use of them, the result is like declaring victory before fighting the battle. If we were so constituted that we could not doubt, what security would there be for truth? What could more cripple the mind than to deprive it either of the power of doubting or the power of believing? To face frankly and fairly the terrors of uncertainty requires courage. Indeed, to think at all, responsibly, rationally, and with absolute fidelity to truth, upon many subjects, requires the highest degree of courage. It is easier, perhaps, to stand before a loaded cannon, and see the match applied, than to adopt a conclusion utterly destructive to past convictions long cherished, and to the authority upon which they rested, in a matter of vital interest and of personal concern. Rebellion against authority in fundamental knowledge or opinion, is more daring than rebellion against authority in government. Nor is the rebel thinker often nearer to sound speculation than the dynamiter is to sound politics. Thought is not free, and never can be, in the sense of being exempt from authority, for it is not and never can be, exempt from the sway of evidence. Authority is one species of evidence, and is often, on a great multitude of questions, the most convincing of any to which we have access. Undue submission to it is unfriendly to truth, but a high respect for it is one of our greatest safeguards — in fact, taking the whole of life together, the very greatest. We are bound to

examine its claims fairly in the particular instance, and to defer to it where better evidence is wanting. Authority which forbids examination is arrogant and despotic, and in that article has no right to obedience, but its jurisdiction to decide for us until we can examine and decide for ourselves on wider evidence is indubitable. And in any serious contest with it, the wider evidence should be examined in the true critical spirit, and conclusions be drawn slowly and cautiously in the inductive spirit. To cast off authority on any less evidence than what would or should set up a new authority, with principles adverse to the old, is rash. He who supersedes existing authority should have reasons sufficient to ordain and consecrate a successor. The force that rightfully conquers a sovereign ought to be strong enough to rule his dominions.

As there must be perpetual authority in the State, so, in these ages, must there be perpetual authority in all the great domains of thought. There can be no interregnum without anarchy. The public coronation may be postponed, but amongst dead or living thinkers, writers, speakers, etc., authority (some for one department, some for another), crowned or to be crowned, always exists. And a general overthrow of the reigning authority in any department is never accomplished without founding and ultimately setting up a new authority in its room. There is no destruction of the throne, but only a perpetual succession by which one ruler comes on after another has been deposed. In our personal, individual thinking, allegiance to the reigning authority, *de facto,* should not be withdrawn, except for reasons which, in our serious, deliberate opinion, formed on full and fair investigation, would justify dethronement. From the necessity of the case, while authority judges us, we have to judge authority. In the first place, to recognize authority at all, we have to select, usually, amongst various claimants, the true *de facto* authority on the given subject. In the next place, we can rarely make this selection without the aid of intermediate authority, and must consequently select, first, that authority. We thus elect our own authority, intermediate and final; and to this power of election, is necessarily incident the

power of impeachment. If we could not impeach authority once recognized by us, try the impeachment and pronounce judgment, we should be bound in thought more firmly by the thought of another than by our own thought. So long as we can change our opinion, we can change our authority, that is, we can discard our former ruler, and transfer our outward allegiance elsewhere. As to our inward, ultimate allegiance, that is due, at least from every enlightened, cultivated man, to his own mind. If he is not faithful to his own best thoughts, his fidelity to thought at all cannot be trusted. But this includes rather than excludes, the acceptance of aid from other minds, for to be true to the mind of final resort, is to allow a just influence to the discoveries, the information, the arguments, the opinions and due authority of other minds. Intelligence is no monopoly — no close corporation, but a great republic. Mind is not solitary and self-sustaining, but gregarious, dependent and coöperative. It is not for every individual mind to grasp truth for itself, but each is, and must be, supplemented in its powers by the powers of many others.

Moreover, we are not to depend on intellect alone to yield us correct thoughts on every subject. The emotional nature is a large factor in the elaboration of thought, speculative and practical, on many of the most weighty subjects that engage our attention. The head is captain, but the heart is lieutenant, and we take the joint as well as the separate orders of both. Those, if any, who reason from reason only, will find it hard to abide by some of their conclusions, for the logic of dry thought is often at variance with the logic of existence. To a world without ice it could be proved that water never freezes; to a world without fire, conflagration would be nonsense; and in this world, if there were no snakes, fleas and mosquitoes, nobody could be convinced that there would ever be any. We know that our reason is under limitations, and we know, too, that we need emotion for correct action, then why not also for correct thought? We are not simple but compound. In mental melody, although the air is sung by the intellect, the accompaniment is played by the emotions. True, they often leave the

instrument, take up the air, and with their seductive voices sweeten but poison the music. Nevertheless, though we must guard against their allurements, we cannot dispense with their skill any more than with their force. Their office is not only to propel, but to assist, often, in guiding and conducting us.

Devotion to truth involves no absolute interdict on the exercise of the imagination, which has the double function of realizing to consciousness that which is, and inventing that which is not. In the former capacity it is a necessary and most important instrument of truth; it the latter, unless closely watched, it is a prolific source of error, being prone not only to multiply its creations, but to utter its counterfeit coin as real money. Without close self-scrutiny there is no telling how much of our supposed knowledge is only imaginary. The man, especially the young man, who thinks he knows a great deal, is apt to have an empty knowledge box, or one filled mainly with fabrications. A cheap mode of accumulating knowledge is to *make* it, and not be at the trouble of acquiring it.

To true thinking habitual accuracy is necessary. Close, careful thoughts are good for packing and keeping, but those which are loose, vague and spongy are the reverse. Precision in expressing thought, whether in speaking or writing, cultivates accuracy of thought itself. Truth of thought and truth of expression are closely related, although thought and expression, at least in some departments of thinking, can never precisely coincide. When we fish for thoughts in another mind, we do not catch the fish themselves but pictures of them, and these pictures are commonly more or less imperfect both in drawing and in coloring.

Education, sound, thorough, comprehensive, and widely disseminated, is favorable to truth in two ways: it qualifies the better for judging of truth, that is, for discriminating it from sham, imitation and falsehood, and it multiplies the seekers after it. Of course, the more the seekers, the more they are likely to find. In some respects, knowledge is like money: the more we have the more we want, and the more we get the easier it is to get more. And, for my part, I like an "appetite that grows by

what it feeds on." With repletion enjoyment ceases, for when we can have no want we can have no gratification. It is not pursuit alone, nor possession alone, but both together, from which felicity is derived. We must want something and have something — have something and want something. We must ever cry, either for more of the same, or for some of the different; and if the same be good and inexhaustible, why not cry, more! more! more! through all time and through eternity? Knowledge is both good and inexhaustible; so, too, are love and other forms of pure and elevated emotion. And they are, moreover, susceptible of infinite diffusion and distribution, with no impairment of their quantity or quality. The knowledge or emotion of one being does not limit that of another. What I know does not make your information the less, but tends, I hope, to increase it; and did your love reach to infinity, even as doth that of our Father in Heaven, not one pulsation of mine would be destroyed. Here is the field, here are the materials, for indefinite growth and progress, not of one, or of some, but of all. There may be unlimited appropriation by the individual, without hindering a like appropriation by every other. In these goods there is perfect community. As to them, there is one great Commune of the Universe.

To find out truth requires labor. One obstacle to protracted and persistent search is impatience to realize results, and despondency under the prospect of delay. Haste to enjoy is an error of time in the music of happiness. The time for happiness is "to-morrow, and to-morrow, till the last recorded syllable." If it cannot be both present and future, by all means let it be future only. Future happiness is capital at interest; besides the pleasure of fruition hereafter, it yields the pleasure of anticipation from the date of expectancy.

When pain is the price we have to pay for pleasure, (and generally it is) we should never willingly go on the credit system, but, if we can, pay in advance—pay up, receive the goods and consume them. When we make a debt, interest runs against us; when we have a debt owing to us it runs in our favor. Of pleasure and pain there can be no complete separation in this

world; but in so far as they are separable, the general condition most desirable is to have our pain behind us and our pleasure before us. Self-denial is as necessary to pleasure as to virtue; without it, there can be no elevated and durable pleasure, nor even the capacity for such. Wait to begin, and then "go slow." The movement of real happiness is not Yankee Doodle or Dixie, but Old Hundred.

I have mentioned the agency of the emotions in producing thought, and hinted that they both lead and mislead. One of their modes of misleading is by exaggeration. Most of them, good or bad, magnify in order to move more effectually. In this part of their work they seem to operate chiefly through the imagination. Without attempting to exhaust the list, I will adduce some examples. Love magnifies all good qualities, and tries to excuse bad ones; hate magnifies all bad ones, and ignores or denies the good ones; hope magnifies favor in prospect; fear, danger, both present and prospective; courage, the insignificance of danger, or the glory of defying it; mercy, the duty of tenderness; justice, the duty of severity; remorse, guilt; despair, calamity; revenge, injury; anger, provocation; envy, the success or prosperity of another; avarice, money; ambition, power, greatness and glory; pride magnifies self for the eyes of self; vanity, for the eyes of other people; humility magnifies self-littleness in comparison with an ideal standard; modesty, the same thing, with a vague reference to present company as a standard; despondency magnifies the gloom of the future in one particular direction; melancholy, its gloom in all directions; cheerfulness, its brightness in all directions; joy, the splendor of the present at a particular spot; grief, the darkness of the past at a particular spot, and consequent dreariness of the present and the future; benevolence, in general, the painful duty of self-sacrifice; selfishness, in general, the pleasant duty of taking care of number one. Pity would magnify distress, and charity would magnify want and privation, if they could be exaggerated, but in our world this is hardly possible. Of course, there is no squaring our emotions by truth of thought without paring off all these exaggerations in each instance, and expelling them from the mind.

Breadth of emotion may coexist with any and all degrees of intensity, and, indeed, it includes them all, in so far as they are proper to be realized. Regard for the human race collectively, is not incompatible with devoted friendship for particular individuals. Interest in the welfare of foreign nations, as at the present time for that of Ireland, is no hindrance to patriotism; we do not have to hate other countries in order to love our own. The more we love everybody, the stronger will be our affection for those who are nearest and dearest. Love requires no compression to make it intense; on the contrary, it heats as it expands. I could accept as a definition of a great man this brief formula: A man of wide knowledge and sympathies. The actions of such a man are almost sure to be upon a scale, and of a kind and quality to correspond with both elements of this definition. He who knows much and feels much certainly lives, himself; and he seldom lacks the power or the inclination to cause thought and feeling of the right sort in others — and thought and feeling are life.

Of the two, it cannot be said that one is more important than the other; both are indispensable; but it is probable that an unworthy, vicious, or malignant emotion is a worse guest for the mind to entertain than a false thought. The heart, I should say, is ordinarily more wounded by moral error than the brain is by intellectual error. But it takes both these organs in a sound state to live a true life, whether of meditation or of ministration and conduct. Some forms of intellectual error may have a temporary influence for good, but the permanent good realized in human affairs is the result of truth. All the great institutions of men are formed, guided and conducted, in the main, by correct thought and feeling. It is truth in church, in State, in society, and individual life, that runs the world.

Meditate upon the exalted character and claims of truth; let the intellect embrace it as both the end and the means of knowledge; and let the affections attach themselves to it as an object of desire and devotion.

TRUTH IN CONDUCT.

An Address Delivered Before the Alumni Society, of the University of Georgia, July 20th, 1886, by Judge L. E. Bleckley.

TRUTH IN CONDUCT.

Gentlemen of the Alumni Society, Ladies and Gentlemen:

You have heard the gentleman's introduction. Now, if you please, hear mine. For his I am not responsible. The only truth in it I heard was my name; if there was any more I tried not to hear it, and succeeded. No matter how well introduced by others, I always bring myself before my audience, if I have any. Very often I have none, and then I don't speak, except to myself. I take myself along all the time, and my habit is to talk about myself as freely as about other people, and quite as favorably; if any difference, more so. In short, I am an egotist. I consider it a great blessing to be myself, a blessing which I appreciate the more, the more I think of the great risk I must have run of being somebody else. Of the fifty-five millions of other people in the United States I might have been any one. Indeed the possibilities were much wider; I might have been any one of the fifteen hundred millions that inhabit the earth. Nor does even this begin to exhaust the contingencies to which I was subject; I might have been any one of the countless myriads that ever did or will live. I might, perchance, have been one of the unimaginable number of animals, or plants, or minerals — a grain of sand, or a mote in the atmosphere. I might have been any one of the units, any one of the atoms, of derivative existence, with my place at any point in the immensities, my time at any moment of the eternities. On the other hand, I might not have been at all.

No wonder that I feel self-complacent, after having drawn the capital prize in such an extensive lottery. And the reason of my complacency, no doubt, is that I take to myself the credit of selecting the lucky number — selecting it myself, with no suggestion from anybody, guided alone by my precocious sagacity.

From Stekoah valley, at the base of the Blue Ridge, in the county of Rabun, the distance to where I now stand is eighty-

five miles, but in making this short journey I have consumed fifty-nine years and seventeen days. Thus my coming to college has been at the rate of somewhat less than one mile and a half per annum. Arrived at last, it would seem that I ought to feel late and expect to be marked tardy, and so I would were it not that I graduated on the way. I must have graduated, for this is my Alma Mater, and I am present now as one of the Alumni. Of course, traveling in my slow way, I could never have overtaken the honor, but it overtook me, or rather it met me in the road, and settled on my unworthy head; fortunately without any examination of the inside.

Stekoah, the name of my native valley, is a word in the Cherokee language, derived from steke, little, koah, big, and signifying little-big. On this occasion I feel Stekoah; a feeling appropriate, I think, not only to college exercises, but to the general run of every day life. Steke by itself lets us down too low; and koah sticks us up too high. It is singular that by going back to the aboriginal Cherokee we get, in one compound word, the most fit name which any language supplies for the right measure of self, that very troublesome quantity; a name suggesting that we are in fact, and ought to be in feeling, just as little as we are big, and just as big as we are little. If this does not measure us up correctly and settle our true magnitude, I call on the professor of mathematics to say what would.

But it is time to enter seriously on the duty of dullness, that grave duty which every conscientious public speaker is expected willingly to perform, without the least mercy on his audience. My opportunity to be dull, or to be at all, in a place so unfamiliar to me as a great seat of learning is due to the courtesy of the Alumni society of this university, which, last year, much to my surprise, elected me to honorary membership, and at the same time honored me still further by inviting me to deliver an address here and now. Deeply conscious of my unfitness in point of scholarship, at least, if not otherwise, for either of these distinctions, I nevertheless accepted them both. My rashness in so doing will astonish others as it astonished myself, but my discretion was fatally wounded by a double-barrelled compliment

which, though felt to be wholly undeserved, was on that very account the more highly appreciated. In the matter of plumage and decoration I would rather be the recipient of mere grace and favor, than to receive like adornment in payment of any ornamental debt, however gay its colors. I always cherish my unmerited honors as the imaginary brightest imaginary feathers in my imaginary crest.

I assume that truth is an acceptable subject, if not a familiar one, at a university. Taking the benefit of this assumption, I shall recite in your hearing a soliloquy on Truth in Conduct, improvised last week:

As I stood alone
Upon a mountain cone;
Beneath me, in the wild,
A fertile valley smiled,
Beyond which north of west
Rose high a mountain crest;
And next, beyond, were set
Some taller summits yet;
And farther off were seen
The highest ribs of green;
More distant rims of blue
Extended still the view,
Succeeding rim to rim,
The last so faint and dim,
So far away and fine,
It seemed a fading line.
On all this landscape lay
The splendors of the day—
A dream of sun and sky
In the slumber of July.

If it has no other merit, it is intensely rural, almost arcadian, fresh from the woods and mountains, having, as it were, rolled down from the summit of the Screamerhorn. Moreover, it is dull enough, I know, for the severe taste of the most dense, dignified and diabolical mental organization that can possibly be in a civilized audience.

Conduct is either positive or negative. Positive conduct consists of voluntary action by the body or its members. Nega-

tive conduct consists of voluntary restraint upon such action. The use of the tongue in speaking belongs to positive conduct. Silence belongs to negative conduct. For convenience of handling, restraint upon action may be considered as a sort of action itself; and so conduct in general may be said to consist of voluntary action.

The only source of conduct is thought and feeling; the only end of conduct is to cause thought or feeling. Thus, at either extremity of any series of conduct are thought and feeling. The chain may consist of a few links or a thousand, but in either case it begins and terminates in these elements. I speak, of course, of conduct which reaches its ultimate end, and not of that which misses its mark or fails to arrive at its final destination. Any voluntary act which is not intended to bear fruit, sometime and somewhere, in thought or in feeling, that is, in one of these forms of life, is absurd. No rational being ever performs such an act. But for its relation to thought and feeling, there would be no reason for doing or for not doing anything whatsoever. There would be neither duty nor interest in conduct, and universal idleness would be no less useful than universal employment.

Feeling includes sensation and emotion. To continue or to modify thought or feeling is to cause it to be thus or so, and hence cause embraces both preservation and change, as well as production. There can be no thought or feeling save in the actor or some other being; consequently, the end of all his conduct is to cause thought or feeling in himself or in some other being.

In and of itself, all conduct is worthless; it has value solely because of its derivation from, and its effect upon thought and feeling. Truth is related to conduct in all, or nearly all, the senses in which the term truth is used; including correctness, accuracy, purity, sincerity, veracity, fidelity. Error is simply deviation from truth, whether by mistake, design or otherwise. The standard of conduct, as of everything else, is perfection; in so far as it falls short of perfection, it is erroneous. For conduct to be wholly true, that is, perfect, it must proceed from

right thought and feeling, and cause right thought and feeling. Error in the source is not cancelled by truth in the result; nor error in the result by truth in the source. It follows, that the means will not sanctify the end, nor the end the means. The one problem which conduct has to solve in every instance, is how to produce good with good; or, at least, without the use of moral evil. It is permissible to employ mere physical evil as an instrument of work, but the only voluntary contact with moral evil which we can rightly have is to resist or repress it. We cannot incorporate it with our practical life and make it a part of our conduct. While the standard of conduct is perfection, we can have no rational hope of reaching that standard; yet, we should make it our constant aim, in order to approximate it as nearly as we can. He who shrinks from attempting the impossible, is sure not to accomplish all the possible. Taking conduct in the aggregate, execution is certain to fall short of conception and design, and if these are not pitched higher than the attainable, attainment will not rise to its maximum. Lofty ideals are amongst the most influential forces in exalting the life, and perfection is the only completely definite ideal which the mind can construct. We can plan a life based on the exact truth, but cannot plan one based on any mere approximation to it. Our thoughts have no scale by which to measure degrees of approximation, and so, unless we go clear up to truth we do not know precisely how near to it we take our stand.

Concerning conduct, nearly or quite all of it, three questions can be made; these are as to its morality, its prudence and its propriety; the first is a question of conscience, the second of judgment, and the third of taste. If conduct is perfectly sound in these three elements it is safe; if unsound in the first, it is to be condemned; if in the second it is to be regretted if not censured; if in the third it is to be criticised with more or less severity according to the degree of its impropriety. There are few acts of any member of society which may not affect others, as well as himself; and even those acts which affect only himself have, (many of them,) an aspect of what may be termed self-duty. An individual has no right to treat himself just as

he pleases. In a broad sense, therefore, morality includes a large part of both prudence and propriety. An imprudent act is generally, an improper act is frequently, wrong.

The faculties most concerned in generating conduct, that is, the conscience, the judgment and the taste, cannot, I think, be too highly cultivated, provided they are all cultivated so as to secure a harmonious and well balanced development. Of course, the matter of supreme importance is to have the strictly moral element of conduct perfectly sound. Both prudence and propriety will admit of some omission or neglect, but the right and wrong of conduct is fundamental. In so far as moral culture may be necessary to purity of life, it is simply indispensable. But no doubt, there may be over-cultivation where the cultivation of the moral faculty is too exclusive, and the result will be fanaticism. Narrow goodness is a dangerous force. Some of the best people in the world have done the most mischief. Energy in goodness is often attended with a corresponding energy in well-meant evil. A striking instance of this is furnished by the history of religious persecution. Not many centuries ago it seems to have been one of the most sacred duties of a good man to burn a better one than himself. The judgment is really the great balance-wheel of the mind, and for that we are dependent chiefly on the bounty and beneficence of nature. A very defective conscience may be brought up by supervision and cultivation to a sound standard of morality; but the most hopeless patient of the educative doctor is one of nature's weaklings. Yet, much may be done to strengthen and invigorate a feeble, or to expand a narrow, or clarify a cloudy understanding. So far as there is a remedy for the want of sense it lies in education. The skill of a real judicious teacher can almost make a mind out of a mere germ of raw material. Still, a manufactured mind is never a very safe one; and there is undoubtedly much waste of labor in attempting to put the last finish of education upon a poorly endowed intellect. If it had only fallen within Nature's plan to make us a race of intellectual giants, it would have simplified the problem of universal education no little. With respect to cultivating the taste, there is a strong

suggestion of danger in it, if either the conscience or the understanding is left behind. When taste becomes the leading faculty, the mind is wrecked, and very often the life with it. But there is a wide reach of benefit in its cultivation to a high degree, where the other faculties are kept up even with it, and still more where they are pushed on somewhat in advance of its attainments. It is certainly desirable to have correct taste, but beauty will not serve as the only or as the chief nourishment of the mind. The good and the true are more substantial and more necessary, though as a condiment, beauty is both delicious and wholesome.

The widest element of morality with which conduct is concerned is justice. My study of justice, commenced in boyhood, and continued, with few interruptions, through the rest of life, has thoroughly impressed me with the supreme importance of this grand and noble virtue. Perhaps none of the virtues could be spared from the world, but I am sure this could not without leaving behind it a solitude or a social chaos. Some of the others are in the nature of moral luxuries, but this is an absolute necessary of social life. It is the hog and hominy, the bacon and beans, of morality, public and private. All conduct is bound not to do injustice; but only a portion of it is bound to do justice. Thus, all conduct of all men is bound not to rob any body, but the right of a creditor to have payment of a debt due him, is only against some of the conduct of his debtor. After some of that man's conduct has discharged the debt, then justice makes no further claim upon his conduct, in favor of his former creditor, except not to do him any injustice. No act whatever can do injustice rightfully to any being in the universe. It is absurd to suppose that there is, anywhere, a right to do the smallest particle of injustice. It follows that there is no conflict, and can be none, between justice and mercy. Any act intended as mercy, which conflicts with justice, is mere violence—violence either by mistake or design, and in either case it is error in conduct.—There is no field, nor can there be any for the exercise of mercy, except in the forgiveness of debts or duties, or the remission of penalties for past offences. And no one can for-

give or remit anything except those things which are due to himself. For you to forgive your debtor and discharge him, is mercy; it is no breach of justice but a gracious forbearance to exact its fulfillment; but for me to forgive your debtor and discharge him, unless I represent you for that purpose, is either a nulity, or an injustice — a nulity if you do not lose by it, an injustice if you do.

Justice is the exact virtue, being mathematical in its nature. Mercy, pity, charity, gratitude, generosity, magnanimity, etc., are the liberal virtues. The liberal virtues flourish partly on voluntary concessions made by the exact virtue, but they have no right to extort a concession; they can only supplicate or persuade. Thus, a man cannot give in charity, or from pity, generosity, hospitality, or magnanimity, the smallest part of what is necessary to enable him to satisfy the demands of justice. It is noble to renounce what justice demands in our favor, but ignoble to indulge any of the liberal virtues by leaving undischarged its demands against us. If I am on the credit side of justice I can make any sacrifice of it that I will, but if on the debit side, I can make no sacrifice of it whatever. I may burn as an offering my own bull or lamb, but not that which rightfully belongs to another owner. To exact private justice has no special merit, except that of not doing injustice; on the other hand, to waive justice that we might exact is a fine exercise of virtue, but not finer than to render justice when we owe it. Private mercy is the renunciation of rights in our favor from a motive of kindness or compassion; the satisfaction of private justice is yielding to rights against us from a sentiment of duty. There is nothing more exalted than duty and its performance. What we freely give cannot be better bestowed than what we pay in discharge of a perfect obligation.

I have said that justice is mathematical in its nature.—One of its functions generally is to ascertain the terms and form an equation. The terms are rights on one side and duties on the other. Public authority duly exercised is the absolute arbiter of many, perhaps of most, rights; but some have been placed by Nature, and others by the consent of mankind, beyond its reach.

There can be no right to anything but a good, and there is no good but virtuous happiness and virtuous means to such happiness. No man has a right to be miserable, even if he could desire to be so, further than as means to his virtuous felicity here or hereafter. And the same condition limits his right to have pain or misery inflicted upon others. No set of thoughts and feelings can owe pain to another set, and, therefore, there can be no just claim upon anybody to undergo pain for its own sake, nor any right in anybody to inflict it for its own sake. A promise payable in pain specifically is void, no less than one payable in death or crime. Justice takes cognizance of pain as means but not as end, except as an end to be avoided. Any conduct having pain for its ultimate end, is erroneous. No man has a right to have his revenge or any of his malignant passions gratified. The suffering of the wicked for the consolation or delectation of the less wicked is abhorrent to justice; but in so far as punishment of the guilty is necessary to protect the innocent and the guilty alike in their rightful happiness and means of happiness, it is one of the chief concerns of justice. It is not the appropriate work of justice to equalize either the happiness or the misery of men. The moral universe is not one of equality between persons in their allowance of pleasure and pain. Neither God nor man has undertaken to equalize in this life, however it may be hereafter, the lot of men in respect either to happiness or the means of happiness. To some extent there is apparent equality, but the general aspect is one of inequality. The unequal elements seem very much more numerous, and most of them more important than the equal ones. No man can rationally complain that another is more happy or less wretched than himself. If there is no debt or duty between them, justice has no concern with the difference in their lot, though the liberal virtues may have the greatest concern with it. If, according to the proverb, misery loves company, we can excuse, but not justify it; even misery ought to commit no breach of benevolence, nor starve its own pain by feeding it on the pain of another.

Though rights cannot exist in pain itself, they can exist in the ulterior results of pain; and thus, though pain cannot be the final end of conduct, its results may be. This is the foundation of penal justice, the ground upon which the right to punish rests and is maintainable. A criminal is not punished on the theory that he owes it to justice, or to the State, or to any citizen, or to all the citizens, to suffer, but wholly and entirely to realize good somewhere through the consequences of his punishment. This good may be partly to him and partly to others, or to others only. So far as the accused himself is concerned, there is no direct effort to do justice to him, or to make him, in that instance, do justice; the one and only care, as to him, is not to do him injustice. Relatively to the public at large, his condemnation and punishment are a debt due, if he is guilty, from the State or its ministers, not from him, he has no duty involved in the proceeding beyond the one violated in committing the crime, except that of submission; and no right involved in it, except that of exemption from all manner and degrees of injustice. If he cannot be punished without injustice, he cannot be punished at all; he may be immolated through legal forms, but at the expense of a sacrifice of truth in conduct. Any implications in the structure of language, legal or ordinary, at variance with the theory here propounded, are the overflow of metaphor. When it is said that punishment is merited or deserved, the real meaning is, that it may be inflicted without injustice, and ought to be inflicted for the public good; and when it is said, the offender pays the penalty, it is meant that he undergoes the pain appointed as the means whereby the public good is realized. We can merit or deserve good only, not evil; and pain is evil—always physical evil, sometimes moral evil, also. When it is only physical evil, it may be used as a means to a good end, provided no injustice is committed; when it is morally evil, its use is forbidden, whether as means or end.

Merit has a positive relation to good alone; its relation to evil is only negative. In a punitive scheme, the problem, as I have suggested, is not to punish the offenders justly, but to punish them without injustice. You may or may not, according to

circumstances, visit your displeasure upon me without violating justice, but you cannot do it in fulfillment of any justice to me. If I do not deserve good, I am without merit; I may have many other bad qualities, but no bad merit, and no good merit of anything bad. To spare the guilty, is merciful, but, in itself, is neither just nor unjust. It is not the exercise of the exact virtue at all, and relatively to the guilty alone, it is certainly not an infringement of that virtue. Inasmuch, though, as the punishment of one may result in good to others, these others can deserve to have punishment inflicted; and failure to inflict it, may be grossly unjust to them. But if they can be as well served without as with its infliction, there is no danger of doing injustice by not inflicting it, unless we include discipline for the reformation and amendment of the offender as a claim which he has upon justice, in which mere figurative use of the term, there may be injustice done to him by not making him suffer. In so far as to be hurt is for his own good, no doubt he should desire, even crave, to be hurt, and would have a sort of right to complain, if he were not hurt to that extent. But such a complaint would stand outside of literal justice, and could approach it only through the region of metaphor.*

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*NOTE ADDED AFTER THE DELIVERY OF THE ADDRESS.

In all that I have said, I treat alone of human society and government, with no purpose to touch questions of Theology. Learned theologians discern a conflict between justice and mercy, founded on a supposed necessary tie between guilt and punishment, which tie, they conceive, mere mercy could not sever without doing violence to justice. Dr. Thornwell's Collected Works, vol. 2, pp. 205-256, in Sermon on "The Necessity of the Atonement;" Dr. Albert Barnes on the Atonement, pp. 30-48, 89-92, 169, 170, 193-195. Being, myself, no expert in Divine penal law, I cannot be sure that the considerations which reconcile justice and mercy in human law, will or will not apply to the Divine law. But I am quite sure of the reconciliation as regards human law; for it provides for mercy as well as for justice. They are both parts of the same system. When a Statute prescribes a penalty for any offence which *can* be pardoned, though it be silent in its letter on the subject of pardon, it virtually says the offender shall be punished so and so, unless he is pardoned. This condition adheres to every penal sentence, for every sen-

Justice has no enemy more to be dreaded, or more to be denounced, than a mob of its friends. Mob violence, with the best intentions, is not only wicked but monstrous. It is virtue consenting to an unsanctified union with vice, in the delusive—the insane, hope that the offspring will be of pure, unmixed virtuous blood. As well might a saint cohabit with a fiend, expecting to rear a family of angels. He who believes that there can be any substitute for law in the infliction of penal justice, is criminally mistaken. The work of a true divinity cannot be wrought by a false god. Death at the hands of an indignant and infuriated mob is indeed death, but it is death not merely by lawless violence, but by high treason against the majesty of law — by the usurpation of its throne and the profane exercise of its most sacred prerogative.

In penal or vindicatory justice, some delay is generally necessary, in order to afford cooling time in the community, and to allow full and fair opportunity to prepare for trial. Trial should be speedy but not precipitate; it must await the conditions requisite to impartial investigation, to calm deliberation, and to just decision.

But a most important element in compensatory justice—justice between man and man, is promptness, punctuality. An act due ought to be performed when due. To delay performance is

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tence is pronounced, not under a part of the law only, but under the whole of it; and the whole includes the law of pardon as well as the law of punishment. Perhaps this is not a principle of Divine law, though it looks like it might be. If God has been the same from all eternity, and if His law has likewise been the same, it would seem that if there is any provision now for pardon, there always has been, and that His whole law, taken together, never separated justice and mercy, but has united them and kept them united in one penal system from all eternity. That their union was effected through a scheme of atonement by the Redeemer would not put justice and mercy in conflict previously to the adoption of that scheme, for the scheme of atonement is eternal. Law, justice, mercy and scheme of atonement, are all of equal antiquity. Whether actual pardon in each particular case is of like antiquity, involves the great question of predestination. Why place mercy outside of the legal system and justice inside? There is nothing analogous to such a

unjust — always vexatious, often injurious, sometimes ruinous. Moreover, as a general rule, the consequences are not confined to the first victim; they extend through him to another, and then to another, and so on indefinitely, the ability to keep engagements being dependent throughout the whole series upon the fidelity of the first promissor. Of course this evil is felt most in pecuniary undertakings; and it is a great evil. To the reproach of our laws, they apply no adequate corrective. Not only do they tolerate delay, but they rather encourage, almost invite it. Were men legally compellable to pay at maturity, they would be far more cautious in incurring liabilities, and much better off in consequence. Too much debt nearly always beclouds the business prosperity of the common people and threatens them with ruin. There ought to be no promise to do anything at a particular time without a serious intention of doing it *then*. Due bills and notes payable one day after date, are demoralizing, and ought neither to be offered or accepted in business intercourse. The rule for money as well as for everything else should be truth. You cannot deal with truth loosely and carelessly, even in small things, without weakening its authority and influence over the mind and the life in larger things. To the honor of the humble laborer, the man that has

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separation in human law. For mercy to be operative at all, it must work on the inside of the law, not on the outside. So far as my knowledge of Divine law extends, were that law duplicated as nearly as possible by human law, the latter would, I think, be considered by any sound lawyer as a system of rewards and punishments, with the reward and the avoiding of punishment dependent, in every instance, upon conditional pardon, granted according to law, not contrary to law. But I must not be understood as attempting to teach anything concerning Divine penal law. Touching it I am a learner, not a teacher.

As between man and man, the obligatory part of justice is to render justice, not to exact it. Though the debtor is obliged to pay, the creditor is not obliged to require payment, but may remit the debt. Whether, without the atonement, this or anything like it might hold between man and his Creator, I know not. That it holds, with the atonement, seems strongly indicated by our being taught to pray for the forgiveness of our debts "as we forgive our debtors." L. E. B.

no capital and can get no credit except that based upon his honest toil, be it said, that he is quite as prompt to do his work at the time nominated in the bond, as is the average pecuniary debtor to pay his debt at maturity. And I would suggest that a most excellent remedy for the bad habits of labor, would be to amend the habits of capital, by way of good example. It is less the duty of the humbler than of the superior classes, to take the lead in such a fine virtue as punctuality. Merchants and bankers do approximate very closely the full measure of this virtue, and the good accomplished by them in founding and upholding commercial promptness is great indeed, but, thus far, it has been confined chiefly to their own circles. The laws of the land ought to advance to their standard, for the community at large, and stimulate the willing by precept, the unwilling by coercion. A British writer on Civilization says: "The tribunals of justice constitute the conscience of the State, and questions of conscience are referred to the former, as, in case of an individual, all moral questions are referred to his conscience." The conscience of Georgia is pure; none more so, whether public or private, in the whole world; but, alas, how slow it is! And this is not the fault of the conscience, but of the conscience maker, that is, the State.

Time is of the essence of all compensatory justice, and a slow conscience does injustice, whether it intends to do it or not.

The prompt payment of debts would go far to prevent certain feelings of hostility between debtor and creditor, which are much to be deprecated. Before a debt falls due, the parties may be friends, may even have the affection of brothers. But maturity past, and the debt unpaid, the creditor smells fraud, and the debtor oppression, and they keep on smelling these disagreeable odors till the matter is settled, and sometimes much longer. The debtor, especially, becomes embittered and is inclined to remain bitter for life. We can forgive our debtors, but who has learned to forgive his creditors? It is wonderful that the burden of paying anything is so onerous to our nature. Even to pay a visit is often so intolerable that it seems almost like martyrdom. And it may be set down as a universal rule, that the longer we owe, the more reluctant we are to pay.

Love furnishes an oft-repeated instance of punctuality, which I much admire. Rarely, indeed, does either of the parties to a marriage engagement fail to come to time. They take conspicuous and commendable pleasure in performing the promise to the very day — to the very hour and minute. This, I am sure, is because there is a woman in the case. Were men to become engaged, the marriage would be put off; then one party come and the other be absent; then the other come and the one be absent; then both be absent; and there would be no wedding at all, but in place of it two suits, one by, and one against each party, for breach of promise; and finally both suits would drop, because neither party was ever ready, nor ever would or could be ready, for trial. Woman has no disposition to procrastinate. She wants everything done and over with, so as to have everything else over and done with as soon as possible. She seldom thinks of violating a promise, in point of time or otherwise, except the promise of obedience, which she violates equally and invariably both when she thinks of it and when she don't. She can't obey, and won't, and won't try. Who can blame her? She is obliged to have a husband, and can't get any without the consent of man, and man won't let her have any without extorting this unreasonable promise. According to much good authority in moral science, extorted promises are not binding on the male conscience; then, why should they be on the female? Hurrah for woman! Our mothers, wives, sisters and daughters are the sort of people I like.

Some minds are so constituted that they neither feel willing to be entirely just, nor authorized to be entirely unjust. Their habitual inclination is to split the difference. And finding that the difference is not a surface but a line, and therefore cannot be split, they are always in:—

TROUBLE.

A very weighty reason
  Why many heads are bent,
And many hearts unhappy,
  That ought to be content,
Is, that only good and evil
  Have unto them been sent.

Not satisfied with either,
  They wish and wish they had
A middle sort of something,
  A neither good nor bad:
That such a thing is wanting
  Has made them very sad.

To serve both God and mammon
  Would come within their plan,
If they thought that serving either
  Was the proper work of man;
They would do what they cannot do,
  But nothing that they can.

No form of petty but cruel injustice, is more common than injustice by superficial public opinion to public servants. Office-holders are abused, traduced and tortured in a manner not only scandalous but shameful. Except in the corrupt atmosphere of great cities, it is rare indeed that an officer does not do his duty; in most cases, he does much more than his duty. He is not only the servant of his constituents, but their devoted slave. Not infrequently he ruins his private fortune in order to do them generous favors, which he grants willingly, and which they return not seldom by ungrateful criticism of his motives. It has come to be thought that as soon as a man gets an office, all he does from thenceforth, is done with a view to hold on to it or to obtain another. Perhaps there is not an officer in the United States that can get credit at once with the people for acting in his most exalted deeds from any other motive. If he even goes to church with scrupulous regularity, they think it is less to worship God than to conciliate them. They demand courting, and yet are suspicious of their suitors, and despise them for their assiduity. There are two ways of compensating for public service, salary or fees, and approbation; and of the two, approbation is immeasurably the more precious to every generous mind. Your mere money is nothing, compared to the tribute of your mind and heart. The great public exchequer of the State is not the treasury but the affections of the people. No one who has not served the public, has any true conception of

the labor and sacrifice involved in holding public office. We are apt to think it a favor to one of our fellow-citizens to elect him to office, and so it is in a certain sense, for it is a great felicity to be useful to one's country; but the burdens of office, even of a small office, are far more considerable than is generally supposed by the non-office holding portion of the community. To be a good justice of the peace, or even a good bailiff, requires much thought and anxiety, and great care and diligence.

Did I attempt to exhaust the topic of justice, the result would simply be to exhaust both my audience and myself, with my subject still unexhausted. I stop, therefore, with the incomplete and imperfect discussion to which you have listened.

My next glance at truth in conduct, follows it into the sphere of individual independence. I need not say that I treat of principles only, with no application of them, even in thought, to particular persons, present or absent.

Man was made for society, and for organized society, since there is no other worthy of the name. The solitary thinker is visionary, the solitary feeler is morbid, the solitary actor is eccentric. Association is consolidation of power in thought, in feeling and in conduct. It is the bond of fellowship, of sympathy and of coöperation. Separation clouds, cools, hardens and attenuates; union lights, warms, softens and expands. A man may boast that he does his own thinking, but if he really does, he lives on a small stock of thought, and that of poor quality. This boast is like another, sometimes heard, of being self-made. A self-made man certainly needs mending. He needs it at once, before he is worn, before he is used; and more especially if he thinks he is well-made. The truth is, to make a man, it takes himself and all the help he can get. In some places in the country they invite the neighbors in to help raise houses, roll logs or shuck corn. This is a good precedent for the man-maker. Whenever an aspiring youth takes a fancy to make himself into a man, he ought to invite at least one whole county to assist at the ceremony. No one should set up as an independent in man-making or anything else; nor should he ever dream of becoming an independent, or desire to become one. And to

be an independent thinker is of all things the most undesirable to any person who wants to retain his reason. The only genuine specimens of the class are lunatics and madmen. To all appearance the most crazy thoughts of a maniac are completely and perfectly independent. Whether a person desires it or not, he will have, and ought to have, individuality in his thinking, and if his individuality is strong that will lead him into vagaries enough without any help from the spirit of independence. We had as well acknowledge that without other minds to lean upon, we could never know whether we were sane or insane. A man might be a stark fool all his life, and never find it out. Our own opinion of the soundness of our opinions only amounts to this — that we think them sound; and we always think them sound whether they are so or not, for if we did not think them sound we would not entertain them, and then they would not be our opinions. I defy any man to entertain a fixed opinion for a single moment without thinking it sound during the whole of that moment. As soon as he thinks it unsound he abandons it, or modifies it to suit his new view of the subject-matter. No difference where we go or what we do, our individuality will always cling to us. We need not be afraid of losing it, or of not having a proper field for its exercise. In conduct touching our individual concerns it may have full scope; there we may let it revel all day and all night; give it any sway we please; make it not only the predominant, but if we are so inclined, the exclusive force in running our little machine; but when we deal with social and public concerns we cannot thrust our bristling and rampant individuality into them, and with right claim for it the same unrestricted exercise as we chose to allow it at home. It is rational enough to apply the principle of association to private business, but irrational to apply the principle of individual independence to public business. The reason is, that we can get on with private business whether several be interested in it or only one, that is, with coöperation or without it; whereas, in public business the only way to move at all is by coöperation, and without it the whole business would collapse. In private business we may have co-partners or may not, but in public

business we are obliged to have them, and they cannot help it, nor can we.

The spirit of truth in conduct requires that the nature of the conduct shall conform to the nature of the business. If a man wants to be as independent as a wood-sawyer let him saw wood. When he undertakes to saw at the state, he ought to saw with somebody — with majorities if he agrees with them, or with minorities if he agrees with them. If he can agree with nobody, and yet feels that he must saw, he may, I suppose, set up as an independent state-sawyer. He is apt to do some mischief at first, but his saw is likely soon to become dull and harmless.

So far as my information extends, but two classes of independents have, up to this time, appeared in the politics of the world — the consistent and the inconsistent. The consistent independent is a political "hermit wrapped in the solitude of his own originality." The inconsistent independent is a monk who retires to the political wilderness not to insulate himself, but to attract others; not to live alone like his consistent brother, but to build up or aid in building up a great monastic establishment. While anxious to increase his order, he is still more anxious that the whole order shall be independent of the pope, that is, of the organized people. And the bulls he dreads are the votes of citizens harmonious enough to vote in concert, and discreet enough to organize for concerted voting. It must be confessed that in some countries these bulls are very numerous; they come out in large herds, and, sooner or later, they run down heresy, and gore it with their formidable horns. His inconsistency does not end with independent membership in the community to which he belongs, in other words, with being a member of an order, but not subject to its control. He adds the further inconsistency of being an organizer, though opposed to organization. But he organizes without admitting it, even to himself, and so delicately, that the organic is the inorganic, and the inorganic the organic; which leaves every member to vote as he pleases, but makes him please to vote exactly as all the rest do. This result is the same as that which follows from open and avowed party organization, except that, generally, it elects

nobody; and if it does elect for awhile it soon ceases to have that effect. This species of independentism may be defined as organized disorganization; and however it begins, its very principle is equal to a policy of insurance that it will end in organized disorganized defeat.

Party organization, frank, candid, compact and complete, is the nurse of the State. Party power is public authority in embryo — the rudimentary force, which, when fully developed through legal forms, presides in the executive chamber, deliberates in the halls of legislation, and dispenses justice from the bench. No method of translating the will of the people into law, and of registering the same in the statute book, has yet been devised or discovered by man, except party intervention. No country has liberty without party, and to expect in the present state of political science, to repudiate party and retain liberty, is like claiming the wages without doing the work, or demanding the goods without paying the price. Voters who mob the ballot box, instead of approaching it with respect for the known will of the party to which they belong, or ought to belong, and with a just recognition of the utility of premeditated concert in casting their suffrages, have too little of the spirit of harmony to combine for the defense of liberty or of any public blessing. To coöperate with party does not by any means require party services from all, but it requires reasonable loyalty to party platforms and to party candidates duly designated and presented for election. For good reasons a man may change his party, that is, separate from one and join another, but to have no party when important public measures are pending, and they are nearly always pending either for adoption or preservation, is like having no country. Truth in conduct touches all the real interests of life. A man can no more decline the duties of citizenship than he can decline those of the family, the neighbor or the friend.

The evil of party is abuse of its functions. To reform abuses is at all times a worthy object, both of desire and exertion. But to purify a party by acting upon it from a position of independence from without instead of from a position of co-

operation within, is not less hopeless than to reform the world by retiring to a desert. The attempt is like trying to cultivate a crop by quitting the plow, climbing over the fences, and mounting upon a stump in the adjacent woods.

Returning for a moment to conduct in general, I will observe that energy has much to do with the quality of work, as well as with its quantity. Languid and reluctant conduct is apt to be more or less infected with error. He who cannot think and feel in order to act, should act in order to think and feel. If you cannot catch truth at one end, seize it at the other, and the very exercise will aid you in finally getting possession of both ends.

THE RIGHTS OF MIND.

Oration by Hon. Logan E. Bleckley, Chief Justice of the Supreme Court of Georgia, Delivered at the University of the South, Sewanee, Tenn., on Commencement Day, 1892.

Reprinted from a Pamphlet Published by Order of the Board of Trustees.

On the occasion of the delivery of this address the Board of Trustees of the University of the South conferred upon Judge Bleckley the degree of Doctor of Civil Law, and ordered the publication of the address in pamphlet form.

THE RIGHTS OF MIND.

Chancellor, Gentlemen of the Board of Trustees, Members of the Faculty, Students of the University, Ladies and Gentlemen:

Dogmatic expressions, when they occur in this discourse, are to be taken invariably with this qualification, "to the best of the knowledge and belief of the speaker,"—a knowledge which is very little and a belief which is very much.

Mind *plus* Not-mind will embrace all being, primal and derivative. Whether mind is the conscious substance itself or only a permanent group of faculties inhering in that substance, it is, if not the whole of personality, that part of it for the sake of which all other things exist. Nothing is of any significance or value save in its relations to intelligence and feeling. Strike from the universe all things but mind, thought and emotion, and nothing would be missed. The office of all else is to minister, to serve as means. Objects of desire may be divided exhaustively into means and ends. The ultimate objects of all rational desire are thoughts and emotions (these and nothing else), to be realized now or hereafter in all minds, in some minds, or in one mind. They alone, in the last analysis, are the stuff and substance of all good. Other forms of good have worth only as means of producing, conserving and distributing these forms. To acquire, retain or modify thoughts and emotions, and to cause their acquisition, retention or modification by others, is the real end of all voluntary activity. The industries of the world are occupied with this one ultimate purpose. The farmer, the mechanic, the merchant, the physician, the artist, the poet, the professor, the philosopher, the divine, the soldier, the statesman, the jurist, and the numerous other toilers with brain and brawn, even the butcher and cook — are engaged in different departments of the same common business, the outcome of which is contribution, directly or indirectly, to thought and

emotion. In this result is found the unifying principle of all their exertions, however diverse and dissimilar their vocations. The common end for which all strive may be pursued more or less consciously, or even quite unconsciously; it may lie at any degree of remoteness from any present means used for its attainment; but it is always the same, and consists of some state, definite or indefinite, possible or imaginary, foreseen or unforeseen, of thought and emotion. Everything else belongs to the category of means. Indeed, a large proportion of thoughts and emotions also belong to that category; they are not prized so much for what they are in themselves as for their efficiency in producing other and more desirable thoughts and emotions, or in preventing such as are undesirable.

This brief but comprehensive survey prepares us for the widest possible classification of the rights of mind, a classification which embraces all rights whatsoever. Everything which can be possessed is worthless save in so far as it constitutes or contributes to mental phenomena. These phenomena are the only constituents of real good in its final form. Well might the poet exclaim,

"My mind to me a kingdom is!"

Thought is concerned with truth and falsehood. Emotion is concerned with pleasure and pain. The ideal completeness of intellectual good is to have no false or erroneous thoughts whatsoever, and always to have true thoughts co-extensive with all truth and conforming to it in every detail and particular; in other words, to know everything accurately and exactly, and to retain that knowledge forever. The ideal completeness of emotional good is to be exempt from pain, and have a constant and ceaseless flow of virtuous pleasure in its maximum degree of variety and intensity. Of course, such completeness is unrealized and unrealizable by any mind except that of Divinity. Certainly, in this present life, no human mind has any right to the maximum either of knowledge or of happiness. Our rights, though extensive, are confined within impassable limits, some of these limits being lodged in ourselves, others in our physical environment, and oth-

ers in the laws, divine and human, to which we are subject. Speaking generally, our rights both intellectual and emotional are limited by capacity and opportunity, and our emotional rights, especially, are still further limited by our duties. All pleasure incompatible with duty is prohibited, and all pain which duty requires us to undergo is to be accepted and endured. Not even death can be declined when duty calls for the sacrifice.

I think it may be said that every mind has a right to all the true thoughts appropriate to its condition and wants, which it can innocently get, and to all virtuous and pleasant emotions which it can innocently have. No doubt it has also a right to some aid from the public, or from individuals, perhaps from both, to develop and expand its powers, so that its native capacity for acquiring knowledge and using it may be enlarged, and the range of its emotional experiences broadened and elevated. That every one, as matter of right, may demand, at the proper time, somewhere and of somebody, instruction and guidance in the essentials of knowledge and right feeling, as well as of right conduct, seems manifest.

This is only to affirm the right of education, intellectual and moral — a right which modern opinion is beginning to recognize as universal. To me, the interest which we have in thinking and feeling correctly is so incomparably paramount to any interest which we can have in goods and chattels, lands and tenements, except as material wealth may contribute to the increase, elevation and dissemination of thought and emotion, that I am quite unable to comprehend why the right of education should be more obscure or uncertain than the rights of property. Were it practicable, every individual man and woman should receive all the education which would be beneficial; that is, all that would result in enlarging his or her capacity for sound thought and virtuous emotion, and for producing these in other minds. That under present conditions this is impracticable, I am aware. Only because it is impracticable does the right of education in our age and generation fall short of the ample measure which I have just indicated. The right stands secure on principle, and may in the remote future be realized to its full extent in practice.

Rights commonly called the rights of person and property, most of which appertain to material means of bringing to pass desirable thoughts and emotions, and of preventing those which are hurtful or undesirable, are under the guardianship of the laws of the land. Concerning the particulars of this immense mass of rights there is no need that I should speak to this audience. I desire to concentrate your attention on a class of rights which lie so close to thought and emotion, and to the processes on which the good or bad quality of thought and emotion depends, that human laws decline to care for them; but they are none the less rights according to the moral code and the law of right reason. Some of these rights have regard to the intellect, some to the emotions, and some to both. Merely as specimens or examples, three or four will now be pointed out and briefly discussed. One of chief importance is the right against intellectual fraud, or fraud upon the reason. This is the most abused, the worst treated, of all rights. It may be violated by self-deception or by the deceptive practices of others. A mind is always entitled to fair treatment, both at home and abroad, but many minds, perhaps most of them, are assailed and often duped and imposed upon by fraud from without and fraud from within. One of the most difficult undertakings is to find and take and keep the right attitude towards our own reason and intelligence. The will constantly endeavors to dictate to the understanding and substitute desire for evidence. We resolve to believe something and then proceed to believe it, or to disbelieve something and then proceed to reject it. That this is fraud of a certain kind there can be no doubt. When we become conscious of it, detect ourselves in the act, and consider it with sober deliberation, it presents both to our intelligence and our conscience, if they are in a sound state, all the characteristics of a trick. Another vice which is equally pernicious and reprehensible is that of deciding on inadequate information. We reason from insufficient premises, and draw conclusions when we know or ought to know that one or both of the premises are incomplete. Suspense is painful, and we are prone to end it by forcing or fabricating a definite yea or nay. This is wrong. We ought to suffer the pangs of doubt so long as

the truth in question is really doubtful, and persevere in inquiry if further inquiry is likely to be fruitful. What cannot be rightly decided cannot be decided at all. It is better to protract deliberation indefinitely than to decide without being convinced. This does not forbid adopting what might be termed a working hypothesis, and applying it diligently and energetically in the practical affairs of life, such as government, politics and daily business. As to these affairs we must act whether we are ready or not, and whether we have fully made up our minds or not; and in order to act up to the demands of our wants and the measures of our duties, we must proceed as if many questions were decided for all time which to our own minds, if we are quite candid with ourselves, are still open. In selecting a working theory we are well justified in reposing on authority in which we can confide until we are able, if at all, to reach full conviction through authority alone, or through it and other forms of evidence. But in the nature of things, nothing can obliterate the difference between seeing for ourselves and crediting the existence of things visible to the eyes of others but not to our own. And we should be careful not to persuade ourselves, or be persuaded, that we in fact see what we do not. To be faithful to our own ignorance involves no denial or impeachment of knowledge in general, or of the knowledge which any one else possesses or thinks he possesses. The aggregate wisdom of the universe is neither more nor less by reason of the faithful adherence of each particular mind to its own true state and condition. It is no less fraudulent to deceive ourselves by exaggerating our knowledge than by exaggerating our ignorance. That we know what we do not know, or do not know what we know, is alike contradictory and false. Why should a man be a pretender, either to himself or others? Why should he be an intellectual hypocrite or impostor? Surely he has the right to be true to himself, and if the right exists it is coupled with a corresponding duty. There is no higher duty upon any intellect than to be candid and conscientious with itself. Indeed, this is the radical intellectual virtue. Without it there is no security for truth, or for the dissemination of truth. A mind which is habitually uncandid with

itself will not scruple to be uncandid with other minds. And the enormity of defrauding other minds, whether by false information or false logic, cannot be overestimated. Whether a lie is put by open statement into premises, or infused by sophistry or fallacy into the conclusion, makes no difference. If it deceives and misleads it does the work of a lie, and ought to incur the odium of falsehood. The amount of mischief done to truth by false and sophistical argument is beyond computation. There is not time to refer to the various devices and instrumentalities used to produce conviction when it is not due. One of the most common is urging the irrelevant. If the irrelevant could be eliminated from controversy the chances of arriving at truth would be vastly increased. Of course, neither this form of intellectual fraud nor any other is always wilful or corrupt. Much of it proceeds from ignorance, much from negligence or carelessness, and much from the mere ardor of advocacy and the passion for victory. But none of it is either harmless or justifiable. Indeed, the well-meant is often the most hurtful.

It is not by any means the whole of intellectual candor for the mind to take the negative or non-committal attitude in those cases in which that attitude is proper. The positive attitude in other cases, especially respecting matters of grave concern, is equally if not more vital. We should be as resolute to accept truth on adequate evidence and to prevent tricks of the will from delaying or deluding us, as we are to reject improbable truth when the evidence to establish it is insufficient. We should be as faithful to our knowledge as to our ignorance, and as ready to end doubt as to prolong it. Doubt for the sake of doubt is like business based on bankruptcy and conducted to render insolvency perpetual. What can be rightly decided should be decided promptly. It is needless to protract deliberation after we are fully persuaded, and a mere working hypothesis is quite superfluous when truth itself is within the range of our own vision. Those truths which by their very nature admit of no conclusive attestation to the reason, but are propounded more to the faith than to the logical faculty are to be clearly discerned only by the eye of faith. This peculiar characteristic and all its

consequences should be frankly recognized and fairly dealt with in weighing the claims of those truths upon acceptance and belief. It is thought and taught by many, by very many, of the ablest minds in the world, minds qualified by study and observation to form an opinion as experts and bear witness accordingly, that a widely spread and most disastrous failure in intellectual candor occurs respecting these truths. Assuming the fact to be established, it is one of the most appalling facts in the history of mind, the real import of it being that minds are engaged in defrauding themselves or trying to defraud themselves, out of the blessing of eternal life; that is, out of those thoughts and emotions which would be vouchsafed to them in heaven if they were to abandon self-deception and permit themselves to be saved. This is a thing so dreadful that it ought to be seriously pondered by every one who can make an application of it to his own case. Impelled to say this by that candor which I am commending, I say it in a spirit of deepest reverence and solemnity.

The next right of mind which I will mention is not an intellectual but an emotional right. It is the right against violence to the emotions. This, also, is a right of first rate importance. It is much disregarded and too often wilfully violated. There are some cultivated persons who would not wantonly strike another man's horse or dog, but who would not hesitate on the slightest provocation, or at times even without provocation, to inflict a painful blow directly upon the feelings of the man himself. Scrupulous forbearance to injure property and a hasty forwardness to wound feelings are sometimes marked traits of the same individual. No doubt such inconsistency would be less frequent if it were generally understood that feelings are more truly and intrinsically property than any of those external possessions to which the name property is usually applied. If emotions are not sacred, there is no reason why inanimate things which minister to them should be regarded as sacred. Surely the less excellent should not be exalted above the more excellent. If any of our belongings ought to escape injury, our feelings ought. What does a man care for aggressions on

the outside save as they trouble or torture the inside? Many and various are the ways of hurting or doing violence to the feelings. Mere neglect when attention is due causes pain. Rudeness, ridicule, captious criticism, petty vexation by teasing, and a hundred others, are the weapons of insult, mortification and annoyance. Why it should afford pleasure to any civilized being to disturb or distress another is a marvel and a mystery.

An emotional right of a kindred though somewhat different description will now be referred to. It may be called the "æsthetic right," or the right against ugliness. Perhaps no one can claim the right to have his taste or sense of beauty gratified beyond the limit which he fixes for himself by providing appropriate means for such gratification. It is not one man's duty to put himself out of the way to display before the eyes of another a beautiful object, such as a painting, a statue or a flower; but the negative right of æsthetic repose undoubtedly exists. While I am not bound, unless I feel so inclined, to exhibit my beautiful things, if I happen to have any, to my neighbor, I am bound not to harass, shock, distress or disgust him by forcing upon his attention needlessly anything ugly or uncomely. If I could help it, I ought not to be ugly myself in his presence; and certainly my general conduct and demeanor before him ought to be as handsome and becoming as possible. Involuntary ugliness can be excused, but voluntary ugliness is a species of awkward wickedness.

The last right which I will glance at is one of a mixed nature. It exists for the behoof both of the intellect and the emotions. It has relation to that something in the mind which corresponds to the muscular system in the body; a sort of mental muscular system which is sensitive throughout and which is capable of fatigue, and finally of exhaustion. The right for its protection is the right to brevity, or the right against being bored. If there is anything on earth more terrible than an army with banners, it is the man (of course there is no such woman) who never knows when to hush. Fortunately such men are rare. But were they very numerous, the choice between living with them and joining the anarchists would not be difficult to make. They

always have good intentions; they sincerely desire to entertain or instruct. They want to make you a present of something—to give you a book after reciting all of its contents, or an insurance policy after expounding the plan, or a machine which they have invented, or a medicine which they discovered and which cures all manner of diseases, or to communicate some secret which will make your fortune, or show you how to save the country, or how to transform the world into an earthly paradise. Indeed, they bore from motives of pure benevolence. This it is which makes it so hard to deal with them. It is impossible not to appreciate their goodness. Who is not reluctant to offend or to mortify them? What resource have their auditors? None save to endure as you have done throughout the time occupied by me in the delivery of this dry and prosy address. With thanks, profound thanks, for your patience and attention, I now release you. Farewell.

THE JUDGE AS A FACTOR IN TRIALS OF FACT.

A Paper by Hon. Logan E. Bleckley, Read Before the Fourteenth Annual Session of the Georgia Bar Association, Warm Springs, Georgia, July 1st, 1897.

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THE JUDGE AS A FACTOR IN TRIALS OF FACT.

The law undertakes to do two things — to dictate conduct and to render this dictation effectual. It prescribes one set of rules to be observed, and another set for use in enforcing their observance. Thus law, when not self-executing, is to be executed according to law. In this respect it may be regarded as a vast machine, overspreading and enveloping society, and running in part by automatic action, and in part by subordinate and accessory machinery, designed for this special purpose and no other. Some of this subordinate machinery is executive, and some of it is judicial. The judicial portion of it consists of the law of procedure. Procedure is the legal machinery with which courts do their work, and their work is to ascertain deviations from the law of conduct and to apply the proper corrective. The law of conduct, otherwise called the substantive law, though in some respects imperfect, is up with the times, and is instinct with vitality and the modern spirit. But the law of procedure, otherwise called the adjective law, fits neither the past nor the present. Past systems have been uprooted, without replacing them with anything adequate to the demands of our own times. Fragments from these systems have been retained which are worse than useless, and other fragments of the highest value and adapted or adaptable to all ages have been dropped out and abandoned. One of the precious fragments thus treated in Georgia is the active coöperation of the trial judge with the jury in determining questions of fact. Within the last half of the present century we have had in this State no genuine trial by jury, either in civil or criminal cases, but only a lifeless and formal semblance of such trials. The presiding judge has been condemned by statute to profound and perpetual silence (in his intercourse with the jury) as to what is proved or not proved by the evidence, or as to the guilt of the accused. No matter how clear and decided and how well-grounded his opinion may

be, nor how much the jury may need his opinion for their proper guidance, he dare not express or even intimate it in their hearing. Were they to ask for it, he would be bound to withhold it. No such trial by jury as this was ever known in England, nor was it known in Georgia prior to the act of 1850. Nor is it theoretically any more than historically, true trial by jury. The maxim that the judge responds to the law and the jury to the fact, does not mean, and never did mean, that the jury are not to have the aid of the judge as a trial expert in forming their opinion upon the facts when he thinks they need his assistance and he is able and willing to afford it. In many cases the judge should not only express his opinion on the facts, but carefully exhibit and expound the reasons and grounds of it, arguing zealously for its adoption. In this way he can prevent obvious justice from being sacrificed before his eyes by the sophistry of ingenious counsel. Nothing but such intervention from the bench can balance the unequal skill and shrewdness of opposing lawyers, or rescue the jury from the perplexity and confusion into which their minds are often thrown by listening to very strong or very weak arguments on both sides. No judicial function is more imporant than that of saving the jury from being misled. So long as the bar is represented before the jury in argument, it is necessary to the sound and certain administration of justice that the opinion of the bench should occasionally, if not frequently, follow as a supplement. Doubtless, in a majority of close and difficult cases, perhaps in every such case, the jury would like to know what the judge thinks and what are his reasons for so thinking; and there is little doubt that to gratify the jury in this respect would be generally useful and rarely, if ever, hurtful to the right side of the case. Indeed, it is difficult to imagine any reason whatever for muzzling the trial judges, as we have done in Georgia, save to give the wrong side an equal chance of winning the verdict with the right side. Turn the lawyers loose and hold the judge, is the policy on which this singular rule of procedure seems to be grounded.

Where the trial judges are able, upright and impartial, as they commonly have been and still are, here as well as in Eng-

land, there is but one decisive reason why trial by jury is better than trial by the judge alone if there were judges enough to perform with due care all the requisite labor. That reason is, that much, sometimes all of the evidence is oral, and on the credibility of witnesses, which is of great consequence to the ascertainment of truth, a judge would frequently, perhaps generally, be at a loss to decide promptly and correctly, whereas, jurors, by reason of their numbers and local acquaintance, are usually free from this embarrassment, or much less subject to it. In cases of conflicting testimony, they know better than a judge would ordinarily know whom to credit and whom to distrust. This renders trial by jury a needful and permanent institution in a wise and safe judicial system, for the time will never come when oral evidence (taken by commission or in open court) will or can be dispensed with. Could all cases be tried on written documents of admitted genuineness, trial by jury would be an absurdity. No law, so far as I know, has ever yet thought of referring to a jury the construction of a writing, that is, the ascertainment of what the writing proves, when its meaning is so plainly expressed as to need no aid from parol evidence to elucidate it. Even the reticence imposed on the trial judges by the dumb act of 1850, rightly interpreted, does not hinder them from telling a jury that a promissory note proves the creation of a debt, or a grant from the State proves the conveyance of title to the grantee. It is only where all or a part of the evidence is oral that the rule of utter silence prevails.

The mischief of the act of 1850 would have been intolerable in the way of consuming time in trials with nothing to try, if the courts had abided by the letter instead of following out the spirit of the act and treating the letter as a mere shell. By a benign construction in behalf of public time and expense the trial courts were left room for directing a verdict in civil cases whenever the evidence is without conflict and so decisive as to render any verdict other than the one directed a manifest *non sequitur* or logical impossibility. This disarmed the statute of its incidental, but not of its direct power to work mischief. It eased the public but left the parties, the right as well as the wrong

one, without the joint action of court and jury in solving any real question of fact on which the aid of the court would, or might be, beneficial to the cause of justice. Where the voice of the judge is most needed and would be most useful to the meritorious litigant, he is forbidden to speak, save in terms of generality, and with circumlocution and conditions and qualifications which as often add to the confusion of the jury as minister to their enlightenment. When the law has made of the judge a sort of prisoner in his own court, to hear him charge a jury in an intricate and doubtful case of complicated facts is almost painful, even to a disinterested bystander. No court can possibly have the influence it ought to have, either on the litigation before it or on the public mind, if the presiding judge is restrained from saying frankly what he thinks of the business he is transacting, and thus doing all he can to bring its real merits into clear and open light. If the people want real courts for the trial of cases, civil and criminal, full and complete courts, with full and complete trial by jury, the mutilation inflicted on the trial judges by the act of 1850 must be healed and the principle of that act, as it stands to-day in the code, must be abandoned. This recommendation involves no addition to the power of the trial judge, but only the restoration of that which he possessed and might or might not exercise at his own discretion under the law as it always existed prior to the year 1850. He could give his opinion to the jury on disputed facts, but they were not bound by it. He could counsel and advise them, but not by way of legal or obligatory direction. He could lead and guide, but not drive them. This was trial by jury, and we ought to get trial by jury once more and then keep it.

To guard against misapprehension, I ought to say, and do say, that in speaking disparagingly of our present legal procedure as a whole, I am not contrasting it with the past, but with what might be and ought to be for the future. I am comparing what we have with what we need in order to be abreast with the times in other departments of human activity and progress. In my opinion, we have made the double mistake of departing from the past in a few instances (one of which I have pointed out) in

which we should have adhered to it, and of adhering to it in many instances in which we should have departed from it. I can give no better general notion of my mental attitude on the subject than by classing myself as a conservative-radical or a cautious reformer. The true measure of progress is that only which can be reconciled with order. This much I want, but am too timid to strive for more. Regular and orderly government is of such supreme importance that no price would compensate for the loss of it.

As a further guard against misapprehension, I wish to add that imperfect as our procedure is, I do not consider the results legitimately attributable to it thus far as very calamitous or deplorable. I think both civil and criminal justice are fairly well administered in Georgia, save in a class of criminal cases which law cannot reach, and in another class which law is hindered from reaching by mob violence. Ordinary criminal cases, in so far as I have observed, are tried as promptly and with as much peril to the guilty as they have been at any time since the organization of the Supreme Court, which was in the early part of 1846, the year in which I was admitted to the bar. From that time up to the close of the civil war I never knew or heard of but one white person being executed in this State without first having the conviction undergo revision by the Supreme Court. The excepted case was that of Radford J. Crockett, who was executed in Fulton county, on a plea of guilty, for the murder of Landrum. He embraced religion after the homicide, and before he could be tried, plead guilty as matter of conscience, and suffered death without troubling any court save to invoke its judgment upon his recorded confession of guilt.

I cannot bring my mind to the conclusion which, according to the public press, so many other minds have reached, that "lynching," now unfortunately so prevalent, is attributable to bad law or bad administration. It seems to me that to account for it on such a theory is not only erroneous as matter of opinion, but pernicious as matter of policy. It suggests a cause for crime which is in the nature of an excuse for the criminal, an excuse which seems to palliate the guilt of law-breakers by faults

in the law or in its administration. Of course, if the theory is sound, the policy of declaring it is equally sound, but those who advance it ought to be very sure of its correctness before persistently urging it. That the lynchers themselves find fault both with the law and the way it is administered admits of very little doubt.

As I have seen a public announcement that this topic is to be a leading one for consideration and discussion by this Association, and the topic itself being of overwhelming importance at the present time, I will conclude this paper by reproducing the substance of a brief correspondence in relation to it.

In the month of April last, a stranger, writing to me from a leading law school in one of the New England States, propounded these three questions: 1. What, in general, do you consider to be the cause of lynching, and why does it increase from year to year? 2. What remedies would you suggest? 3. To what extent is the maladministration of criminal law responsible, and what changes in such administration would be likely to prove helpful?" My answer to these questions was, in substance, as follows: "First. The prime cause of lynching is the mistaken belief, widely prevalent among good people, that as great and dangerous criminals deserve instant death, it is morally justifiable to execute them by private violence, without trial and at the earliest possible moment after the guilty deed. Along with this belief and stimulating it to practical activity is a conviction that such executions inspire the highest degree of terror, and are thus more efficacious in preventing atrocious crimes than legal executions would or could be. With some economically minded persons the cheapness of lynching and consequent saving of public expense is a consideration not without weight and influence. Many who would not participate in a lynching are gratified, when one occurs, that the affair has gone off without cost to the county. And the like economical motive operates with redoubled force on the question of arresting, trying and punishing the mob. It would increase the taxes, bankrupt the treasury, ruin the county. Several causes contribute to the progressive increase of lynching. Probably the usual provocations are annu-

ally more numerous, but whether they are or not, such an evil as lynching naturally moves with accelerated velocity, the avenging mind of the country is more and more on the alert to detect and capture offenders, and a sort of rage or passion for enforcing lynch law has sprung up and become widely spread. Men in greater and greater numbers have found out that to usurp the function of administering punishment affords a pleasurable emotion of satisfied justice. They taste the baleful sweets of personal vengeance, and find the hot gratification of inflicting death (where they are sure it is deserved) is more enjoyable than the cool and tranquil spectacle of its infliction by the public executioner. This emotional element has been present and somewhat active from the beginning, but it is more energetic now, and, like all unchecked indulgence of the passions, swells to larger proportions as time advances. Second: When good people do wrong because of an erroneous opinion which they entertain, the appropriate remedy is to bring about the rejection of that opinion and the adoption of a more correct view of the subject. This is the remedy for lynching. As to the best method of making the remedy effective, there might be room for doubt if the obnoxious opinion were entertained alone by those who engage in lynching. In that case it could be urged that the most speedy and efficacious means would be enlightenment by the infliction of punishment. But the opinion is shared in by many who do not act upon it, but who, nevertheless, sympathize with the heresy, and are not unwilling that it should be carried into practice by those whose faith in it is strong enough to generate works. These passive believers are numerous enough to afford the active lynchers all the neighborhood shelter they need to screen them, through public sentiment, against punishment. Argument addressed equally to both classes is the only available instrument for uprooting the opinion, or so weakening it as to render the vicious conduct it inspires practically amenable to penal law. Third: There is abundant reason to conclude that a considerable number of persons, not otherwise abnormal in thought, feeling or conduct, would rather assist at a lynching than have the guilty party tried, convicted and executed according to law. The admin-

istration of criminal law is not less perfect than it has ever been. There is little danger that a person so certainly guilty as to lead an honest lynching party to execute him would not be convicted and punished if tried regularly by court and jury. Men are lynched, not because they would escape if dealt with by judicial methods, but because lynchers prefer their own method for three reasons. It is more expeditious and terrible; it is cheaper; and it is more satisfying to the feelings. If a man ought to be lynched (and so the lynchers always believe), what besides lynching could do full and complete justice? Lynching is not a mere mode, it is also a measure, of punishment. So its advocates seem to think."

In taking leave of the subject at the head of my paper, as well as of the digression from it into which I have allowed myself to wander, I declare in the most impressive language at my command, that in this mysterious, difficult and wonderful human life two things are barely possible. One of these is to raise a baby, and the other is to try a stubbornly litigated case correctly. The very strongest case, if "fought to the finish," has all the nakedness and is exposed to all the perils of a healthy infant. It is liable to be carried off by croup, whooping-cough, measles, mumps or anything that can be given or taken by legal contact in a forensic atmosphere. The trial judges are by far the most important public servants in the business of saving case life, and shackled as they are by the tongue through legislative distrust, I marvel at their success. All honor to the patient, laborious, able and faithful trial judges of Georgia!

THE LAW, AND THE IRRELEVANT.

An Address by Judge Logan E. Bleckley Before the Sixteenth Annual Session of the Georgia Bar Association, Warm Springs, Georgia, July 6th, 1899.

Reprinted from Annual Report.

THE LAW, AND THE IRRELEVANT.

Mr. President and Gentlemen:

I am here as the guest of this Association, and I feel proud of the occasion and the opportunity.

Duty and inclination both urge me to utterance, but beyond acknowledging my obligation and testifying my pleasure, I am not sure of finding anything appropriate to say, notwithstanding I have appealed beseechingly to premeditation as well as to inspiration for succor and supply. But no lack of the appropriate shall make me entirely silent. Hospitality bids me speak, and the ancient garrulity of the invited guest stirs within me. The inappropriate, thank Fortune, is always available. Of it there is never any scarcity, and so long as it abounds there is no absolute necessity for being dumb.

I take courage also from another consideration. Surely I can trust to the friendly sentiments which I entertain towards this Association and all its members, to my interest in its career, its welfare and its usefulness, and to my connection with its past history and labors, to lend some degree of appropriateness to any brief address which my habitual thoughts and feelings may prompt me to make in your hearing. These thoughts and feelings are the resources on which I shall rely.

I greet you, my brethren of the Bar, jointly and severally, with the heartfelt assurance that age does not weaken the tie which binds me to you, and that death alone can break it. I remember with gratitude all you have done for me, all the honors you have conferred, or caused to be conferred upon me, all the compliments you have paid me, all the generous praise you have bestowed upon me, all the indulgence you have shown me, and all the helpful assistance which many of you have afforded me in the performance of duties often onerous and distressing. And you, the living, who are here bodily present, are but part of the audience to whom I address these words. I speak to an invisible as well as a visible audience, and what I say applies alike to both, with this difference, that my remembrance of obli-

gations to the dead is attended with sadness and melancholy, while my obligations to the living inspire cheerfulness and promote enjoyment. I am truly glad to be indebted to you, although your claims upon me are so large that I am hopelessly insolvent and can never pay. In shaping the new tax law it ought to be so framed as to protect you from taxation on these claims, for they are utterly worthless. I hope the statute when perfected will not even require them to be specified in your returns, though I am aware that it is expected and perhaps intended that everything else known or discovered, with a due proportion of the unknowable, shall appear in somebody's return, or in the returns taken altogether.

Having said enough, and more than enough of myself, I will touch briefly on that ever-living theme, the Law.

The Law is like life, the longer we know it the better it seems. Its beneficence shines brighter and brighter to the old lawyer as he grows older. Its majesty becomes more imposing, its grandeur more exalted, its utility more comprehensive and precious. With clearer vision he sees the attributes of sovereignty, their transcendent glory, their sublime beauty, and their all-embracing bounty and benevolence. Save God alone, what is more worthy of reverence than the Law. Yet some there are who stint obedience to its mandates and both usurp and defy its authority. If good citizens do this, alas for the sophistry of thought or of feeling which misleads them! Did they ponder soberly a few simple elementary truths it would be enough to restrain them; for good citizens, I am persuaded, do not wilfully depart from good sense and right reason. The truths I commend to them are these: By its very nature law is supreme; its dominion within its rightful sphere is exclusive; every person, without exception, owes it obedience, and the disobedience of one person is no reason, moral or legal, for disobedience by another; the existence of one criminal is no rational ground for the existence of two, or a dozen, or a hundred; and that one class of offences does not stop is no reason why another class should begin, or having begun, should be continued. Attentively considered, these propositions will be found as certain and self-evident as the axioms of mathematics. They are true now, have always

been true, and will be true throughout eternity. And I will add that nothing but the irrelevant in the shape of fact, thought or feeling can hinder their acceptance as truth by all rational beings, whether human, superhuman or subhuman. And I warn every candid mind that hesitates as to their acceptance to look out for the particular irrelevancy which causes its embarrassment, and resolutely silence or expel it.

This brings me to the last topic of my address, which is the Irrelevant, coupled with a national example of it.

Under the inspiration of international chivalry, we instituted an action at arms against the Spanish Monarchy, suing as *prochein ami* for humanity. The particular group of humanity sought to be benefited consisted of the Cubans, who were struggling for independence. They had fought so much without success that conditions had become inhuman, and we concluded that more fighting, if we took a hand in it, would render them human again. So we fought, were victorious and recovered all we sued for on the score of humanity. Here diplomacy set in, and we amended our pleadings. Hitherto we had been for our wards; now we put in for ourselves, and in the end recovered the Philippine Islands and brought upon us a bloody oriental war, a most irrelevant war, and yet we must fight through it or do what Americans have never done, back out. This is a striking and costly lesson in the might and mischief of the irrelevant. How much irrelevancy there was in this national example may admit of question, but that there was some, and quite enough to work serious harm, can scarcely be doubted. My own opinion is that the whole proceeding was irrelevant from the very inception onward.

In spirit and temper, I am optimistic, thoroughly so; but I admit there are times when my optimism is severely tried by the irrelevant. It is the most dangerous adversary of truth and justice, to peace and order, to progress and prosperity, that exists on the earth.

I conclude with this sentiment: Success to my successors! And I lay upon my successors of every kind, official, professional and personal, "my heirs, executors, administrators and assigns," this admonitory injunction: Beware of the irrelevant.

VALUE AS QUALITY.

Address by Judge L. E. Bleckley Before the Twenty-third Annual Meeting of the Georgia Bar Association, Warm Springs, Ga., July 20, 1906.

Reprinted from Annual Report.

VALUE AS QUALITY.

When we think at all, the subject of thought must be something or nothing. Nothing is without existence; it has neither quality nor quantity. It is of no kind, no grade or degree, no likeness or unlikeness, no number, weight, size or duration. It is nothing, simply nothing. But something, anything, no matter what, has both quality and quantity. These two attributes spread throughout the universe, and everything shares in and partakes of them. They share in and partake of each other. There are many kinds of both, each kind being in some respect different in quality from the other. There is no quality without some quantity, and no quantity without quality. They can be thought of and considered separately, but can not separately exist. They are always united and interlocked; each has the other, and everything has both. Quantity is the so much of quality, and quality is the what of quantity.

In order to answer the question, "What is value?" the problem, and the sole problem, is to find the quality by which value quantity is distinguished from all other kinds of quantity. Of course the quality sought is one which must be present, in every instance, in which value is present. It must also be a quality which is sufficiently homogeneous to admit of the whole being measured by one and the same common unit. We know, in point of fact, that labor, land, commodities of all sorts, money and credit can all be measured by comparison with the same standard of value. This would be impossible if they did not possess value quality, that is, some quality common alike to them all. Anything to which this quality belongs has value; anything without it is destitute of value.

Utterly useless things are without value. They stand to the universe of value just as nothing, or non-existence, does to the universe of being. They are not in it. They are economic

ciphers. Useful things also are without value unless they wear the harness of ownership. If they belong to nobody they are not assets. And the same is true if they are harnessed so loosely that they may be treated as belonging to everybody — for free use at pleasure by each and all alike. The two conditions are virtually one and the same, for it is of the essence of ownership to be exclusive as well as inclusive; that is, to exclude some persons and include others. Where none are shut out, enclosure serves no purpose. Value is confined to useful things which have a single owner, or a limited number of owners; and it is further confined to such things as admit of being passed from one owner, or set of owners, to another. Thus utility, ownership and the possibility of changing ownership are essential to value.

Utility is fitness and capacity for supplying want as a need or of gratifying it as a desire. Apart from their utilities, all our possessions, all the subjects of ownership, are but dust and ashes. If the utility of things could remain to us and be appropriated to the service of our wants, it would not matter if things themselves perished or were blotted out of existence. We might dispense even with our own bodies without any sense of privation if they were of no use to us. Who would care for causes if effects could be had without them? What woman, for instance, would be troubled with a husband if she could have all his utilities free from incumbrance with himself? Or what girl would want a lover if she could have love and all its delights, consolations and satisfactions without him to worry, perplex and disturb her?

Nothing but utility can respond to human need or desire. Utility stands to want somewhat as medicine stands to disease, with this difference, that want is a universal malady with which humanity is afflicted both when in health or out of health. Sick or well, we have a multitude of wants, not one of which can anything but utility mitigate or heal; and in most cases any possible cure is only temporary; the appropriate remedy must be administered over and over again so long as life endures. Nor

is death itself a complete deliverance. We then need the service of the undertaker, the funeral ceremony and a final resting-place.

Wants, present and prospective, are so numerous, and many of them so urgent and inexorable, that under their united pressure the whole industrial activity of the race is engaged in the production, preservation and distribution of utilities with which to serve and satisfy them.

Production and exchange are the two methods of procuring utility besides the bounty of nature, human beneficence or the accidents of fortune.

Exchange is a means of distribution after production has taken place, or of regulating distribution in advance of production. Some persons produce nothing; others consume a part of their products and have a surplus; others consume none of their own products, but depend on exchange for a supply of the particular utilities adapted to their wants. As all are consumers, each of these classes will have a want common to all. This want is the want for exchange. The non-producer will want to exchange what some one else has produced for what he needs; the producer who has a surplus will want to exchange that surplus for something else; and the producer who has no use for his own products will want to exchange them for other products adapted to his own wants. Thus arises the want for exchange, which is not the less a want because other wants stand behind it and give origin to its existence. The utility called for by this want, and the only one which can respond to it, is utility for exchange. This utility is common to all exchangeable things, and in respect to it such things differ in no regard save as to more or less, some of them having more and some less utility for exchange than others. Other utilities are static and relatively to this utility which is dynamic, are specific or particular. They are utilities for food, for clothing, for lodging, for education, for pleasure, amusement, etc., but utility for exchange, while particular, is also a general utility and embodies the great multitude of diverse and particular utilities. It is that utility by which any and all others lodged in exchangeable things may be

procured by those who do not produce them. The want for exchange is usually for one or the other of these purposes, for re-exchange, for consumption, or for accumulation; and utility for exchange is alike available for any of these purposes. All dissimilarity of wants disappears in the want for exchange, and all dissimilarity of utility disappears in the utility for exchange. From this it results that utility for exchange can be definitely quantified, and it is the only utility which can be quantified so as to embrace every specific utility, and give a common sum or product for all kinds of utility whatsoever. The utility for exchange includes all the others which can be exchanged, as white light includes all the colors of the solar spectrum. It is both an aggregate of the others, and at the same time a particular utility unlike any one of them.

Wants exist wherever there is need attended with desire, and often when the need is not so attended. We may need a severe surgical operation, though to receive it be in the highest degree undesirable. So it may be needful to contract a debt or to part with our money in making necessary purchases, though we had rather not. On the other hand, we may desire things which we do not need, and which it would be better for us not to have. We may even desire to be extravagant and wasteful, or foolishly ostentatious. Nevertheless, desires of this sort are wants, and their gratification depends upon the appropriate utility. The want for exchange is both a need and a desire, and in many cases has all the vehemence and urgency of our most imperious wants for specific utilities; for in numberless instances exchange is the only means of procuring them. But for this means millions upon millions of persons could not exist through a single month, and many with ample resources for exchange would be unable to procure food and fuel for to-morrow, save by appealing to charity. In civilized society it is not improbable that men of the largest wealth would be without so much as bread and cheese for dinner to-day, could their wants not be provided for by exchange. The want for exchange is the great purveying want, and utility for exchange is its source for supply.

All the other wants urge and importune this one, and upon it is concentrated their united energy; and it is thus that their pressure is felt in the marts of the world and in every hamlet and neighborhood within the bounds of civilization.

It is by means of utility for exchange that the wants of others are made tributary to our own and ours to theirs. Their wants prompt them to supply ours, and ours prompt us to supply theirs. Exchange is coöperation under non-coöperative motives. It is harmony by antagonism, altruism by egotism, the social through the solitary, benevolence through selfishness, mutuality by reason of exclusiveness, union in consequence of division. It remedies division of labor by admitting all laborers to share in the fruits of a common productive activity. In so far as these fruits are consumed by their respective producers, demand and supply are balanced, but the excess becomes common stock, forming a pool, to which every member of society resorts for a part of his supplies and from which every one draws as much as he puts into it, the utilities withdrawn by each being generally different from those he contributes.

What the producer consumes of his own products may be considered as having the same utility for exchange as have the like products which enter the market and are sold for the market price. Since he needs them for his own consumption his keeping them for that purpose is equivalent to selling them and then buying them back immediately to answer his own want for them. Thus, utility for exchange is not confined to things actually exchanged, but appertains equally to things which are never sold. Accordingly, in taking stock, or collecting statistics of wealth, or in making returns for taxation, things held for consumption are always counted as being of the same value as similar things bought and sold. They fall within the principle of dividing the spoils of war equally between him "that goeth down to the battle" "and him that tarrieth by the stuff."

We see now that the proper definition of value as quality is utility for exchange, the utility which is common to all exchangeable objects, and the only utility which these objects, whatever

they may be and wherever they may be, share among them and in which they all participate. Some of these objects are good for one use, some for another, and some for another, in endless variety, but they are all of use for exchange, though some of them, such as paper money, promissory notes and bills of exchange, are good for nothing else. Utility for exchange is the somewhat of which the attribute of value consists, and from which results that sort of some which we measure, reckon and calculate when we estimate things according to their value and express the results in dollars, cents and mills, or in any other unit of currency and fractions of that unit. To say that a thing has value is the same as to say it has utility for exchange, and to say it has utility for exchange is the same as to say it is valuable. Things which have value are of three general classes, labor, commodities and rights. These only are the subjects of ownership, and these only can be bought and sold.

Both ownership and the possibility of changing ownership by mutual consent of parties, are essential to the existence of value. Obviously, ownership alone would not suffice to make room for value. There might be ownership without a scintilla of value. This would be the case if all ownership of things, their uses and products, were legally and perpetually stationary; if the first owner could never pass or transmit his title; that is, if there could be no second or subsequent owner of anything whatever. So, too, might there be both ownership and change thereof without value. This would be the case if ownership could pass from one to another by gift, will or inheritance only, but never by contract, never by mutual consent of parties, resting on the acquisition of something by each of them as a consideration for parting with something else. Under a system of ownership thus restricted by law and made effectual in practice there would be no sale, swap, or barter, no renting or hiring, no lending for interest or other recompense, no exchange of any kind, and consequently no value.

The essential nature of value is bound up with disposition by contract, and is no less fixed and immutable than the multi-

plication table. The concurrence of all mankind would not suffice to alter the nature of value or its ultimate dependence on contract.

Value, besides being a basis of credit and of social standing, has but one function. It can be applied directly to one use only, namely, the shifting of ownership by the exchange of one thing for another, something for something else. Several consequences result from this limitation on the office and use of value. The first is, that a thing, however useful it may be, can have no value unless it is a subject of ownership, or if it belongs equally to all mankind. Accordingly, the air, the light and heat of the sun, the high seas, etc., are without value. The second is, that useless things, or things so trivial as that no one cares for their ownership, are also without value. And the third is, that anything of which every one has enough for the present with full assurance of an adequate future supply, though it may be both highly useful and the subject of ownership in severalty, has no value. An example of this is the case of the manna in the wilderness, where for nothing but the labor of gathering and storing it a daily supply of over two quarts of food for each person in the community was furnished by Divine bounty. Ample quantity and uniform distribution were both present to discourage the commercial spirit, yet the report of the case suggests that the enterprise of some of the beneficents may have been on the alert for profitable trade in this celestial article, notwithstanding the apparent absence of demand, for in violation of the order to leave none of it "till the morning," the experiment of hoarding it was tried; but the commodity perished on first hands before it could be sold, if indeed any sale was contemplated. Perhaps the object of fruitless experiment was only to save the labor of gathering after the next period of precipitation. Be this as it may, it is easy to see that there was really no market for the bread of the wilderness, no reason why any of it should change owners, and though the sale of it was not expressly forbidden, it was, we can be sure, of no value.

A close approximation to this case is that of water for drinking, bathing and washing purposes under average circumstances.

Ordinarily, where no considerable expense has been incurred for an artificial supply, water is free to all consumers. Each person has, or can get at will, all he needs without other cost than going or sending to where nature has placed it and dipping it up. In point of fact, water is thus in most places generally out of commerce and remains so, for the reason that it is without value, although everybody requires and must have it.

All objects of value, besides labor in its several varieties, consist of those things, corporeal and incorporeal, which, in the broadest sense of the term, are called assets. These include all property, real and personal, and hence money, rights and credits, everything whatever which will exchange for anything else, either by means of sale or transfer, or by means of collection through voluntary or enforced payment. A right to receive payment stands as the subject of ownership until payment is made, when the right becomes extinct and in lieu of it the creditor acquires ownership of the money or other things received in payment, and the debtor parts with this ownership and has thenceforth freedom from the burden which his obligation to pay imposed. Though the payment does not involve any fresh contract, but only executes a previous one, there is a real change of ownership consummated at the time payment takes place, for the creditor parts with the right, which returns to the debtor and becomes extinct, and the debtor parts with the medium of payment, the same passing to the creditor and becoming his property. And the like view holds in reference to making and receiving satisfaction for wrongs and injuries, the right to redress being a subject of ownership, and though generally not assignable is exchangeable between the parties themselves equally with a contractual obligation; and hence such a right may be treated as assets, if the cause of action and the solvency of the wrong-doer be sufficiently certain. It puts but a slight strain on the word "exchange" to apply it between debtor and creditor, or between wrong-doer and the injured party, so as to embrace the act of payment or making satisfaction. The rendition of labor for wages is a veritable case of exchange, although

labor perishes as fast as it is performed, just as a right to receive satisfaction of a debt or for a tort perishes the moment satisfaction is realized. It may be added that, although labor itself can not be treated as assets, for the reason that it has no existence except momentarily during the time of its performance, an existing right created by contract to have labor performed will constitute assets the same as any other legal right to a future rendering of payment.

Perhaps it is needful to remark that in enumerating objects of value the term "thing" includes the use of things, and that the use counts as a thing in all cases where the substantial ownership of the use is severed, whether for a longer or shorter period, from the ownership of the thing itself. Thus a man may rent his farm for a year or for several years to one person and sell it to another, or he may sell a horse and retain in himself the use of it for a day or a month. So well is the use of a thing of value that it is only on account of its use or uses that a thing has any value at all.

WIT AND WISDOM OF CHIEF JUSTICE L. E. BLECKLEY IN THE GEORGIA REPORTS.

Paper Read by Albert H. Russell, Augusta, Ga., Before the Fifteenth Annual Session of the Georgia Bar Association, Atlanta, July 7th, 1898.

Reprinted from Annual Report.

WIT AND WISDOM OF CHIEF JUSTICE L. E. BLECKLEY IN THE GEORGIA REPORTS.

Every lawyer who is familiar with the Reports of the Supreme Court of Georgia, must have been deeply impressed by the opinions of Chief Justice Bleckley. This is so not only because of his great ability as a jurist, but also on account of the quaint humor with which he enlivens the discussion of intricate legal questions, and the attractive style in which all his opinions are written. They are the only ones of their kind, and are remembered when those of other able judges are forgotten.

It is of interest to note that since his resignation from the bench, he, at the request of the Court, wrote the opinion in the case of Green *v.* Railroad Co., 97 Georgia 36, and in the case of Board of Education *v.* Purse, 28th S. E. Rep. 901, a letter written by him to counsel for plaintiff in error is cited as authority to sustain the position of the majority of the Court.

It is not my purpose to discuss his opinions from a legal standpoint, but to lay before you a collection I have made from his many sayings that have attracted my attention, some for their wit and all for their originality.

54th Georgia.

"Let the declaration and the copy-note, in this case, be read together in a spirit of candor, and there is not one man in a thousand who would be likely to misunderstand them. To miss the meaning, the reader would have to be a man of much learning, and one whom much learning hath made mad."—Jennings *v.* Wright & Co., 539.

"These restrictions upon the wife's power, imposed for her own benefit and protection, are perfectly consistent with the act

of 1866 and the new constitution, which simply secures to the wife all her property, and makes it her separate estate. She is as much exposed to the 'kicks and kisses,' especially to the kisses, of her husband, with all as with only a part. If the husband and his creditors are allowed to prey upon her estate at all, it is not likely that they will be the less eager to digest it because it happens to be large. On the contrary that would only render it the more tempting."—Humphrey *v.* Copeland, 546.

"When man and wife coöperate for good they can do much good; and so, when they combine against third persons and coöperate for evil, they can do much harm. In protecting women, courts and juries should be careful to protect men too, for men are not only useful to general society, but to women especially."—Id., 548.

"But the rugged path along which the jury must have walked to arrive at the material and controlling truth in the case, was made smooth, or rather cut short, by the court. . . . . Under the instructions given to the jury there is no certainty that the jury took the trouble and responsibility of passing on this plea. The strong probability is that they did not, for the charge of the court enabled them to pause at a place of perfect rest on the wayside."—Sugart *v.* Mays, 555-6.

"In this case no appeal is made to our knowledge of law, but we are invited to exercise our skill upon a couple of facts — one, whether a house was built according to contract, and the other, whether the work was paid for. We have exercised such skill as we possess, touching the mysteries of building and paying, and the result is, that we are unable to make a better verdict for the plaintiff in error than the jury made, and so the judgment of the court below must be affirmed."—Oglethorpe Manufacturing Company *v.* Van Winkle, 569.

"The stock is shown to be unissued, and of a servient class, subject to assessments, which have the first lien upon it,

and even now, burdened with an unpaid assessment for a considerable sum. . . . . It seems to lie, as yet, in the womb of the corporation, not having reached a development and maturity warranting it to be issued to the owner. It may be compared, not inaptly, to the expected issue of a slave, or to a foal not yet brought forth. . . . . To delay creditors here until they had dealt with such security as that in Tennessee, would be to send them away, not to realize, but to experiment. That security is not ripe; the one in Georgia, so far as appears, is made and ready for harvest. Let it be gathered in."—Callaway *v.* People's Bank, 574-5.

"This was a claim case with a garnishment in the belly of it."—Wilkinson *v.* Chew, 603.

"If the evidence be, in truth, as strong as it is claimed to be, it may well be trusted to win a second verdict. Let it be subjected to that test, and if it succeeds we shall better understand its power, and know better how to prize it at its true worth."—Sewall *v.* Holland, 613.

55TH GEORGIA.

"If the decision, foreshadowed by the court, had been one in denial of the motion, perhaps it would have been too late to withdraw; but we do not see why a victory may not be declined in the very moment of success. Men do not always know what to pray for; and when they see that an ill-chosen petition is about to be granted, to be obliged to persevere in it and accept the boon, whether they will or not, would be a strict rule of practice. It would seem that they ought to be allowed to drop their suit and quit the court — taxed only with the costs."—Cherry *v.* Home B. & L. Asso., 20.

"The brother was not sworn as a witness, but the sisters both testified, and, for women, they swore hard. One of them must have been in deep error, for they disagreed widely."—Mixon *v.* Pollok, 321.

"The charges of the bill do indeed make a diabolical case. According to them, Potts was a most mercenary and seductive rascal; his wife's marriage was a fraud; her last will and testament was a fraud — only her death was fair. If, in very truth, there was such a scheme of wickedness, it is gratifying to find that it was mercifully overruled, so that it did no real harm to these complainants. It cannot be denied that Potts started out as executor and came in at last as owner, having succeeded the testator even in the office of husband. But why may not a Potts marry for love? and once married, it was no uncommon lot for him to become the favorite of his wife, and therefore her legatee. Half his good fortune is thus accounted for; and the other half was the result of purchase, at what seems to have been a fair price. The jury were satisfied not to molest him, and so are we."—New *v.* Potts, 427.

"Trial, under our system, is a coöperation of minds — a grave and serious consultation over what should be done and how the end should be accomplished. The attorneys in the cause are not mere carriers to bring in materials for constructing the edifice; they have a right, as representing the parties, to suggest where every important stone should be laid, and to assign reasons, drawn from legitimate sources, in support of their suggestions. Their reasons may be good or bad, but such as they are they should be heard and considered."—Van-Dyke *v.* Martin, 470.

"In the view of some judges jeopardy arises not out of the trial, but out of the verdict; as if, in a combat intended to be mortal, there was no danger of being slain until you are hit."—Nolan *v.* State, 523.

56TH GEORGIA.

"Logically considered, the trial of a criminal case is an effort to complete a final syllogism, having for one premise matter of law; for the other, matter of fact; and for the conclusion the resulting proposition of guilty or not guilty. It is

the duty of the judge to supply the jury with material for the major premise of this syllogism; and it is the duty of the jury to collect from the evidence the minor premise, compare the two, draw the conclusion, and declare it in their verdict. Inasmuch as it is possible for the judge to mistake the law or misrepresent it, the material which he supplies, or some part of it, may be erroneous. Are the jury, nevertheless, to accept it as correct, or is it subject to their revision and correction? May they, if they think it faulty, reject it, and substitute in its place something corresponding to their own convictions of what the law really is? Are the scriptures of the law an open Bible, or must they be read for the laity by the priesthood of the bench?"—Habersham *v.* State, 64-5.

"This case presents a contest over cattle and turpentine. The herdsman makes a stand against the aggressions of the manufacturer. The man whose vocation it is to turn the herbage into beef rises up against the man who seeks to convert the trees into turpentine. The disputed element is fire. Fire is the friend and ally of him who seeks after turpentine, but the mortal enemy of him who rejoices in the possession of many cattle. The one ranges the forest with his brands of burning; the other, in alarm, cries fire! and clamors for its extinction by a court of equity. And equity, it seems, finds this a difficult business. It is wanting in hooks and ladders, engines and other appliances, and has no water-works. How equity is to put out the fire, or to prevent it from spreading, is more than we know without some thoughtful consideration. The complainant, however, is in a court with his application for aid by the writ of injunction; and that is a writ which has arrested many things, and may possibly arrest fire itself. Let us see."—Harrell *v.* Hannum. 508-9.

"A locomotive and a mule may well pass over the same ground, so that they pass at different moments of time. If, however, they contend for the same place at the same instant, and a collision ensues with damage to either, the diligence of

their respective owners may be challenged and compared."—Georgia Railroad Co. *v.* Neely, 542.

"It seems, from authority, that to a complete larceny by A, there may be added, by a sort of criminal accretion, another complete larceny by B: 25 Ga. Reports, 515; also, that a man may commit a crime as principal without being present: 30 Ibid., 757. Compare 26 Ibid., 493; Code, sections 4305 to 4308; 17 Ga. Reports, 346; Roscoe's Cr. Ev., 871, 872, 873. There is matter for much thought in these things, and mystery enough to bewilder one for some days. The Code seems plain; but the same law existed when the 25th Ga. and the 30th Ga. Reports were made. For my own part, judicial candor obliges me to say that I do not know whether the main staple of Judge Wright's charge in the present case, about scheming, planning and furnishing brain-work, is good law or not. I am not sufficiently master of the subject to overrule him, and yet I secretly wish he would not charge the like again. It is some little relief to my perplexity to find that the charge is unguarded in that part which refers to the prisoner as possibly instructing another when and how to steal."—Minor *v.* State, 633.

57TH GEORGIA.

"The better practice is, to decline charging refined speculation, and give only coarse, sharp-cut law. What shall come to the jury as evidence, is for the court. What it is worth when it arrives, is for the jury. They can discern its true value with spare assistance from the bench. The judge may well assume that they have a fair aptitude for their share of the common business."—Moughon *v.* State, 106.

"In thus defining them the court's dictionary was at fault."—Id., 107.

"It is a mistake to suppose that a citizen can present a balance-sheet at the city treasury, and get his losses cashed whenever the improvements in his neighborhood do not go forward

as rapidly as they might, or in the best possible manner."—Tuggle *v.* Mayor, etc., Atlanta, 117.

"The motion for a new trial is the speech of the party, not of the judge."—McDade *v.* Hawkins, 151.

"Where man and wife are acting together, on the same side of a question of property, they are under the temptation to do themselves more than justice. What is secured to the one is apt to be shared by the other. With respect to enjoyment, however it may be as to title, neither is a stranger to the other's fortune."—Booher *v.* Worrill, 238.

58TH GEORGIA.

"Insurance is business, and not elaborate and expensive trifling."—Mobile Ins. Co. *v.* Coleman, 256.

"Dead eyes that look alive are not false tokens, perhaps, and yet they may deceive as effectually as a skilfully executed work of art. They are a sort of counterfeit made by nature, and when offered in trade, with a representation of soundness, are apt to be accepted for what they appear to be. They were so accepted in the present case."—Tatum *v.* State, 409.

"In respect both to law and evidence the verdict is good. Some people think it is 'smart' to cheat in swapping horses."—Id., 410.

59TH GEORGIA.

"The scheme of removal ordained by the Act of Congress is open and public. It is by petition. It contemplates a taking with leave, and not furtively by a sort of statutory larceny."—Carswell *v.* Schley, 19.

"For my own part, I think there are multitudes of people who are trustworthy and reliable in all situations and under all

circumstances. Declaim against the world as we may, it abounds in truth, purity and integrity. The law brands no witness as impeached just because he is not at peace with the scoundrel against whom he testifies."—Skipper *v.* State, 65-6.

"The defendant, while in default, may resist, passively, whatever is brought to attack him, but cannot make a counter attack. Though not allowed to return the fire, he is not obliged to run, but may stand until he is shot down."—Hayden *v.* Johnson, 106.

"To be too drunk to form the intent to kill he must be too drunk to form the intent to shoot."—Marshall *v.* State, 156.

"The brief of counsel asserts that the new trial was granted on Sunday. If it was, this objection should have been openly specified in the bill of exceptions, and not concealed under a generality that affords of it no hint whatever. We cannot permit a judgment to be ambushed in this court in any such way."—Swindle *v.* Poore, 338.

"Repairs to the foundation are not attended with the same consequence as when the superstructure is altered. You may prop the execution by working on the judgment, though you cannot prop the levy by working on the execution."—McLendon *v.* Frost, 351-2.

"The truth is, that what the propounders have to carry, on the score of sanity and freedom, is more in the nature of ballast than cargo. It is just ballast enough to sail with — no more."—Thompson *v.* Davitte, 475.

"We think the answer not so much beyond the question as to render any of it inadmissible. These things cannot be cast together so as to make an exact, mechanical fit. It is hardly practicable to deal with testimony as we would with bullets — cutting off the necks and rejecting the superabundant material which has run over in molding."—Id., 484.

"A good case will not be apt to miscarry on a second venture."—Delane *v.* Central Railroad, 634.

"In this case, though it is involved in law and fact, and the facts were numerous and complicated, the court acted as both judge and jury, the parties consenting to that mode of trial. The law and facts are thus before us blended in one mass. In delivering his charge as judge silently to himself as jury, we know not what legal propositions the court laid down. We suppose we must give him the benefit of every presumption on both branches of the case; and, so doing, we cannot pronounce with due legal certainty that he erred. We can suspect him of error, but cannot convict him. We held up the case from the last term, when it was argued, until the close of the present term, and used all reasonable diligence to discover the alleged errors. But the farthest advance we could make was into doubt. We entered that dim, misty atmosphere and could neither go forward nor return. There we rest."—Gray *v.* Willingham, 858.

60TH GEORGIA.

"There is not much to dispute about, but perhaps equity can do more complete justice than could be done at law. As the chancellor wants to apply equitable principles rather than the ordinary rules of law let him have his way."—Morris *v.* Barnwell, 147-8.

"It is a mistake to suppose that a city belongs to the inhabitants alone. Trade is broad, and will not brook limitation at the will of those who may happen to bear municipal sway. Commerce in Atlanta is not a close corporation — it is not confined to the elect. Whoever comes to trade may trade on the same conditions as attach to those who preceded them. The right is free to all upon the same terms; and it is in vain for those who are in to clamor for the exclusion of those who seek to get in. Atlanta is open alike to all citizens of the United States, and will so remain while the organic law of the Union is unchanged. A local policy at variance with the broad spirit

of the Constitution may be attempted, but cannot be maintained. It may prevail in the council-chamber, but cannot gain recognition in the court-house except as a temporary form of error."—Gould *v.* City of Atlanta, 167.

"A corporation of this State cannot be dissolved by an Act of Congress, or by the administration thereof through the Federal courts. Georgia created, and she alone can destroy. Besides, it is not the purpose of the bankrupt law to dissolve corporations. 'Your money,' not 'your life,' is the demand of the Bankrupt Act."—Holland *v.* Heyman, 180.

"As a general principle it would seem that an officer whose duty it was to conduct the vessel into port cannot buy up claims against the wreck at a discount, and take credit therefor on his own liabilities at par."—Id., 181.

"The jury belonged to the vicinage, and could and did interpret the testimony in the light thrown upon it by the local gloss. They understood what such a mode of living in Savannah meant; whether it meant concubinage or marriage. We believe its ordinary meaning throughout Christendom to be matrimony; and we are aware of no reason why it would or should be differently construed in Savannah."—Dillon *v.* Dillon, 206.

"The jury had in their room a copy of the code, but did not look at it. To grant a new trial on this ground would be to do as has not been done hitherto."—Lovett *v.* State, 260.

"The writer of this opinion knows from personal experience that an invalid may be able to ramble among the mountains and fish a little for speckled trout without being fit for business in the court-house. The other members of the court are weak in the faith and seem loath to recognize a state of health so ambiguous. We all think that as the defense on the record was not sound in law, the refusal of a continuance to establish it was not positive error."—Brumby *v.* Barnard, 294.

"The rind and pulp of an orange, or the envelope of a letter and the letter itself, are not much more closely connected than a passenger's trunk and its contents, when the trunk is in the care of the carrier, and the key in the passenger's pocket. . . . . The traveler had almost as well be put in jail for an hour or two, as to have his trunk or valise locked up at the railroad station. Perhaps he would rather go to jail for a little while if he could have the company of his baggage, than be free on condition of parting with it. To separate him from that which is the object of his chief care and solicitude through the whole course of his wanderings, is hard upon him indeed. Between passenger and baggage there is a relation beyond that of mere ownership. When baggage is lost, it is not simply privation; it is bereavement."—Western Railroad *v.* Thornton, 301-2.

"A ministerial officer, armed with due process of law and acting within it, is the servant of the State, and not of the plaintiff."—Western Railroad *v.* Thomas, 313.

"Interest is a great rascal, but is not an absolute reprobate. Its doom is not perdition at all events. It has a chance of salvation. It is not obliged to commit perjury."—Davis *v.* Central Railroad, 333.

"The love of justice! What a great love it is?"—Id., 334.

"This shows that jurors are to be driven upon the prisoner in single file, and not by platoons. He is not to be confused by looking upon a multitude of faces at once, but is allowed to scan each countenance separately. He is not to be thrown into alarm by too strong an exhibition of force. He takes his jurors one by one, and wrestles with them single-handed. . . . . There is no reading in the books of a regular march of the jurors upon the prisoner, and of his having to welcome or repel more than one at a time."—Williams *v.* State, 372.

"The truth is, a debt is equally just, whether there is a remedy for its recovery or not. Remedy does not make jus-

tice, but has relation to enforcing justice. There is a kind of injustice in waiting for legal remedies to be invoked, and in obliging creditors to incur the expense and delay of prosecuting them. Whoever wishes to practice the highest order of justice, will pay without being sued. Right, not remedy, is the foundation of duty. Remedy is the whip that urges performance on the unwilling."—Langston *v.* Aderhold, 380-1.

"Completion is an indispensable fact, as much so as labor, and the affidavit of foreclosure might as well not mention labor as not aver completion. . . . The court did not err in holding the affidavit defective; and the entire superstructure built on such a foundation had to tumble."—Walls *v.* Rutherford, 441.

"Diligence to detect fraud is as much incumbent upon a party who labors under no disability, as to do any other act in which his interest is involved. He must look about him and see what villainies environ him. If he has been caught in a net, he must feel for the meshes."—Sutton *v.* Dye, 449.

"The true law, everywhere, and at all times, delighteth in the payment of just debts. Blessed is the man that pays. The practice of paying promptly, and to the last cent, tends to the cultivation of one of the most excellent traits of human character. If debtors were guided by their own true interest, on an enlarged scale, they would be even more clamorous to pay than creditors are to receive. Tender would be more frequent than calls for money. Debt is the source of much unhappiness. The best possible thing to be done with a debt is to pay it."—Roberts *v.* Tift, 571.

61ST GEORGIA.

"In taking a wife a man does not put himself under an overseer. He is not a subordinate in his own family, but the head of it. . . . . A subjugated husband is a less pleasing and less energetic member of society than one who keeps his true place,

yet knows how to temper authority with affection. . . . . Being a husband, he is the free head of a family, and as such needs no license to bind himself by his contracts — not even the license of his true and lawful wife."—Braswell *v.* Suber, 399-400.

"The low tone of the court in ruling out testimony, was not a matter to be passed over by counsel at the time without remark, and afterwards brought up as cause for a new trial. . . . . Besides, suppose a tone in the Superior Court to have a wrong pitch, how are we to review it? We are not sure that mere sound is amenable to a writ of error. Perhaps, with the aid of score and scale, as in music, it might be brought before us and take its chances for reversal or affirmance."—Wheatley *v.* West, 407.

"In order to shield himself by the bad logic of his defamatory article, he should have taken care to make the logic worse than it was."—Tillman *v.* Willis, 436.

"If not ready for action because one of the commanders is not in position, there should be communication with the absentee, if practicable, and a postponement until he comes up. To strike for victory in his absence, and after the field is lost, not abide by defeat, is contrary to all sound rules of forensic combat."—Hart *v.* Thomas, 471.

"The case, though it has many sprangles in the record, has a solid nucleus which controls it."—Kirkland *v.* Wade, 480.

"The bill sought to ward off, by the same means, two blows, with two like instruments, aimed by the same parties at the same object. To exact a unity in the bill more strict than this, would be to go beyond the sticklers for the dramatic unities — the classical purists in dramatic composition, who are to be satisfied with nothing less than complete unity of time, of place, and of action. May not he who attacks with a double-barrel be resisted, just as if he shot wih a single-barrel?"—Clary *v.* Haines, 526.

"Mere evidence is food unassimilated; a verdict, or finding, is the tissue into which it is converted by assimilation."—Schley *v.* Schofield, 531.

"Fun is rather too energetic, even for Christmas times, when it looks like a disposition to indulge in a little free and easy homicide. Shooting powder-guns at a man as a practical joke is among the forbidden sports."—Crumbley *v.* State, 584.

"The trustee had no direct interest in favor of upholding the mortgage, and it is plain he had no inclination to uphold it. He was a defendant in sympathy with the complainants — a Greek in the Trojan camp."—Colesbury *v.* Dart, 626.

62ND GEORGIA.

"The decree went against him; and by him all who hold or may hold under him thereafter, were represented. In him they fell. He, their head, was condemned, and they in him were condemned also. He was the Adam of their race. They are lost."—Gunn *v.* Wades, 22.

"Unknown quantities are manageable in algebraic operations, but hardly so in forensic proceedings. No court can safely administer a secret. But a medical secret of all others is the least amenable to juridical administration. To make drugs by concealed methods or from undeclared materials, for dissemination among the people, is a business of great responsibility, affecting more or less the public health; and for a court to engage in it, by a receiver or otherwise, has the appearance of being rash. Perhaps, as a means of satisfying a final decree in a cause, a court of chancery might do it after taking competent medical advice; but before or without such advice the circumstances would have to be very extraordinary to justify it."—Merrell *v.* Pemberton, 34-5.

"Beside the labor which the members of this court as a body bestowed on the case, one of them gave to it special study

and examination, and kept it for a very long time under consideration. In bulk and complexity, nothing equal to it can be easily found. In fact, it is a separate science, and to do it full justice upon every detail would require an opinion not less voluminous than the record itself. To write such opinion is a task which I could not perform to my own satisfaction or to that of the parties or their counsel, without ceasing to participate in the current business of the Supreme Court."—McLaren *v.* Clark, 117-8.

"That a change of incumbents in the office of Attorney-General had taken place in the meantime, makes no difference in the legal principle. The Attorney-General, like other counsel, must abide consequences of acts done or omitted by his predecessors. Judgments, whether against the State or against individuals, do not yield to a change of counsel or legal advisers. The most eminent professional skill on earth cannot raise the dead to life by a motion to amend. This case was dead when the present Attorney-General was called to treat it, and his genius and learning can never reanimate its dry bones. He may well rest from his labors so far as it is concerned."—Goldsmith, Compt., *v.* Georgia Railroad, 545.

"This is an unsightly literary blemish, but not a grave legal infirmity. In school the composition would not pass, but it may be tolerated in the court-house. The meaning is clear, though the verbal inaccuracy is glaring."—Dickson *v.* State, 589.

"It is the body of the case and not certain of its limbs only, that the final judgment takes hold upon. Whoever brings the legality of an imprisonment into question by writ of *habeas corpus,* should, in the first instance, show as much cause for his attack as he can. He must discharge all his weapons, and not reserve a part of them for use in a future encounter. He must realize that one defeat will not only terminate the campaign, but end the war."—Perry *v.* McLendon, 605.

"In a justice court, local government is realized in its last analysis. This tribunal is our primary — most rudimentary organ of home rule. It is the *ne plus ultra* of judicial simplicity. An action in it is not by petition or declaration, but by summons; and the summons may be a very scanty document. It seems designed merely to put the defendant in that state of mind in which a man, a little roused and irritated exclaims, 'What's the matter? What's up? What's to pay?' Practically, as experience teaches, when curiosity is thus excited, both memory and inquiry become active, and it is not long until the surprised individual knows clearly and definitely 'what it's all about.' "—Atlanta, etc., R. R. *v.* Hudson, 683.

"Virtue in all the offices of life must take its order from duty, not from happiness. Happiness is not the mistress of the moral household, but the favorite daughter. Though the most cherished, she is not the most discreet member of the family. She is to be checked and restrained, and not have her own way. With too much indulgence, or too much present gratification, she becomes a spoiled child, and degenerates into misery."—Daniel *v.* Frost, 706.

"To do as one pleases, even when he pleases, is his business, to act absurdly or from low impulses, is a very precious right. The right, especially, to harry and bedevil one's creditor is inestimable."—Id., 708.

"Generally, the older of two deeds from the same person to different grantees, covering the same premises, is the better. In ordinary legal meteorology, if either is mere vapor while the other is solid, it is the younger, not the elder which is among the clouds."—Jones *v.* Georgia Railroad, 720.

"Restitution before absolution is sound in law as in theology; and that doctrine prevents an *ex parte* rescission by the plaintiff without restoring defendant to his original situation."—Summerall *v.* Graham, 731.

"Those who are impatient with the forms of law ought to reflect that it is through form that all organization is reached. Matter without form is chaos; power without form is anarchy. The State, were it to disregard forms, would not be a government but a mob. Its action would not be administration, but violence."—Cochran *v.* State, 732.

"Injunction *ad interim* is a part of equity police. It is a device to keep the parties in order, and prevent one from hurting the other whilst their respective rights are under adjudication. There is often a cry for the police when there is no real danger."—Kirtland *v.* Mayor, etc., Macon, 759.

63RD GEORGIA.

"In that stage of the litigation, even when the merits are clearly against the losing party, he should have such mental satisfaction as he could derive from having finished his speech. He should not be slaughtered with his address warm in his bosom, alive and undelivered. His case being finally and forever lost, with his argument unheard, he would feel perhaps, and sometimes justly feel, that the outrage of deciding without hearing him was greater, far greater, than the calamity of the adverse decision. He might get justice, but with it a wound from the court more painful than any justice which the court could administer; for it is not impossible that a suppressed speech may occasion more mental torture than a lost case. . . . . In a perfectly clear case, it might possibly be incumbent upon the chancellor to indulge the doomed party and his counsel in 'beating the air,' and hear them as fully as if the interlocutory question under consideration were really debatable; but whether it is or not may be left open for the present."—Early *v.* Oliver, 18-9.

"It will be seen from the foregoing summary that the case tried belonged to the composite order; it was partly legal growth and partly a concerted manufacture; it stood with one

foot in equity and the other in law; it was compound as well as consolidated, yet in its ultimate analysis, it turns as to the land upon usury, and as to the mules upon bailment."—Tribble *v.* Anderson, 52.

"The evidence is not conclusive. It pushes the mind into that great pitfall called doubt, and there leaves it. The jury are the best doctors of doubt that we know of, especially when their treatment has been revised with approval by the presiding judge."—Central Railroad *v.* Ferguson, 85.

"It is a rare complaint against a physician that his bill is too small. The law puts no such pressure upon a doctor as to require him absolutely to charge for every visit. It allows him the gratification of a free and friendly call upon his patient, even when he has a right to put it in his bill."—Buchanan *v.* Sterling, 229.

"The real plaintiff in an action of ejectment is the alleged lessor. John Doe is a mere figment of the law's imagination, with no more existence as a real suitor than Mercury has as a real god. Only during high poetic transport does the law regard him as a true, objective personality. Though born of the muse, he is dry and commonplace enough to be engaged in the extensive real estate business which he pretends to carry on, but in very truth, he is a phantom—a legal will-o'-the-wisp, an ingenuous conceit of the law in its rapt, poetic moods. He is not one of the plaintiffs which the sedate section of the Code we have recited speaks of."—Rutherford *v.* Hobbs, 245.

"The general rule is that a complainant in a bill of interpleader merely stirs up a war and then leaves the real belligerents to fight it out, he retiring from the scene to repose in dignified ease, holding, the while, the prize which is to reward the victor. We do not see that in this instance there was any occasion for the complainant to take part in the combat. So far from being entitled to conclude the argument, he had no right to be heard at all."—Andrews *v.* Halliday, 271.

"Mrs. Rose Taylor testified as a witness in behalf of the State, and it is evident from the tenor and tone of her testimony that she considers her husband as a member of her family, and herself as the head of the establishment. The true legal relation of husband and wife is in her mind reversed. Metaphorically speaking, she puts the petticoat in a more advanced position than the pantaloons."—Morgan *v.* State, 307-8.

"According to the charges of the bill, the father had no capital, and the son no character. The man without character carried on business in the name and upon the credit of the man without capital."—Nussbaum *v.* Heilbron, 315.

"The suggestion is pregnant with innovation, but barren of law. . . . . The denial of a request to charge the jury is complained of, which request, we must say, contained an excellent definition of a tippling-house. Most probably it was taken from good authority; but the dictionary definition of a term is frequently the mere air of the music which the accused has attempted to execute with variations. Frequently, too, the variations are so luxurious and ingenious that the air is much disguised, and to hum it over from the bench is but little assistance to the jury in following the real performance. It is something easier for an offender to baffle the dictionary than the penal code."—Minor *v.* State, 321.

"It not unfrequently happens that a judgment is affirmed upon a theory of the case which did not occur to the court that rendered it, or which did occur and was expressly repudiated. The human mind is so constituted that in many instances it finds the truth when wholly unable to find the way that leads to it.

> " 'The pupil of impulse, it forc'd him along,
> His conduct still right, with his argument wrong;
> Still aiming at honor, yet fearing to roam,
> The coachman was tipsy, the chariot drove home.' "

—Lee *v.* Porter, 346.

"There is little doubt that the defendant was the deity of this rude shrine, and that Mary was only the ministering priestess. But if she was the divinity and he her attending spirit to warn thirsty devotees where to drink, and at whose feet to lay their tribute, he is amenable to the State as the promoter of forbidden libations. Whether in these usurped rights he was serving Mary or Mary him, may make a difference with the gods and goddesses, but makes none with men."—Forrester *v.* State, 350.

"It is true that the case had passed from the primary court, and was pending on appeal, but curative measures are not restricted to the early stages of a case; our 'court physicians' now treat chronic disorders as well as acute ones."—Burrus *v.* Moore, 409.

"As we all know there is sometimes a drag and sometimes a run; and those having business to attend to in court must bear in mind that a wide variation from the average rate of progress may occur. Indeed, it is always probable that something improbable will happen."—Warren *v.* Purtell, 430.

"Like the sun, the law shines on all who are in the same place with equal warmth and splendor. The most charming and attractive woman in the universe, loaded down with misfortune, is not to prevail as a suitor where she is in the wrong, be her adversary whom he may."—Boland *v.* Klink, 453.

"The rule of amendment is as broad as the doctrine of universal salvation."—Murphy *v.* Peabody, 524.

"The name of this young Mr. Peabody has had quite a struggle to get a correct standing on the record and retain it. I do not profess to be altogether certain, even now, of the precise name which he bears; but the land is his."—Id., 526.

"If I could be reinforced here by the votes, as I am by the opinions of the Supreme Judicial Court of Massachusetts and the

Court of Appeals of New York, I could easily put my brethren in the minority; but as it is, they are two against one, and I have no option but to yield to the force of numbers — in other words to 'the tyranny of majorities.' Though twice beaten I am still strong in the true faith, and am ready to suffer for it (moderately) on all proper occasions. My dissenting opinion in 59 Ga. 406, is not only reaffirmed, but is widened in range so as to embrace all cases, actual or possible, in which assignees in bankruptcy sue in the appropriate State courts to collect assets. There is no limit."—Dodd *v.* Middleton, 639.

64TH GEORGIA.

"When I was a solicitor-general, nothing in my experience struck me with more force than that, term after term, in each county of my circuit, I met substantially the same body of people who had connection with the criminal docket — the same array of prosecutors, defendants and witnesses. Here and there a new man would come in, and occasionally a prosecutor would become a prosecuted, and *vice versa,* and the witness class would sometimes disintegrate and mix up with the other two; but my intimates were, and continued to be for four years, very much the same individuals. They were my regular customers."—Davis *v.* Mayor, etc., Macon, 136.

"There are so many Hawks in the facts of this case, that the air is a little darkened. Only two of them need fix attention; these are George F. and Warren."—Hawks *v.* Hawks, 241.

"The hardships of the particular case is no reason for melting down the law. For the sake of fixedness and uniformity, law must be treated as a solid, not as a fluid. It must have, and always retain, a certain degree of hardness to keep its outlines firm and constant. Water changes shape with every vessel into which it is poured; and a liquid law would vary with the mental conformation of judges, and become a synonym for vagueness and instability."—Southern, etc., Co. *v.* Duvall, 268.

"But must we therefore hold that a like presumption arises out of a proper separation — proper in time, manner and circumstances? Surely not. And what can be more fit than for the court to send out a juror, attended by a bailiff, when he is under a stress of nature which civilized man regards as a summons to retire? A comparison of the various possible methods of meeting and dealing with such an exigency had better be left to silent meditation than discussed here with needless realism. It is enough if those who may become interested in the subject will form a mental picture of the situation, and contemplate it for themselves."—Neal *v.* State, 275.

"There was too much haste. The commission issued one day was executed the next, and the judgment appointing the guardian followed immediately. Action, trial and judgment in two days, and no previous notice! The surprise and shock of such swift inquisition into an old gentleman's wits might so confound him as to prepare him for consenting through his counsel, to being an imbecile."—Morton *v.* Sims, 304.

"Nonsuit is a process of legal mechanics; the case is chopped off. Only in a clear, gross case is this mechanical treatment proper. When there is any doubt another method is to be used—a method involving a sort of mental chemistry — and the chemists of the law are the jury. They are supposed to be able to examine every molecule of the evidence, and to feel every shock and tremor of its probative force."—Vickers *v.* A. & W. R. R. Co., 308.

"The point appears here in its virgin state, wearing all its maiden blushes, and is therefore out of place."—Cleveland *v.* Chambliss, 359.

77TH GEORGIA.

"It looks too military for a judge to sit in his chambers and there call before him the heads of families and order them peremptorily to do thus and so in the way of furnishing support to

their wives and children, though living apart from them, until a suit of some sort has been instituted in some court, either of law or equity. We think the statute does not contemplate anything so anomalous in a time of peace, and we cannot construe it as a war measure."—Yeomans *v.* Yeomans, 125.

"Except in a mind disappointed by the verdict, there could be no possible doubt of the legitimacy of the jury."—Powell *v.* A. & S. R. Co., 197.

"In the house hog bones, in the garden hog hair, hog entrails, hog meat buried in the earth, refusal of the occupant of the premises to permit a search without legal warrant, his abrupt departure from home whilst the warrant was being procured, his flight or retreat to a point more than fifty miles distant, and his continuous absence until arrested and brought back for trial, are strongly suggestive of a suspicious intercourse on his part with some hog or other. The jury were of opinion that it was the hog described in the indictment; and as he was a near neighbor to that hog, and as it disappeared about that time and its owner went in search of it as a stolen hog, and as the hair and the meat found buried in the garden looked like the hair and meat of that hog, it is highly probable that the jury were not mistaken.

"Any man who inters his pork may expect the late departed hog to be hunted for as stolen, if it is hunted for at all, on his premises."—Stevens *v.* State, 311 and 312.

78TH GEORGIA.

"He swore one way, and talked another after the trial; and they want a new trial on this ground. Of course they cannot get it."—Lasseter *v.* Simpson, 66.

"Having thus ascertained that the case tried was the main bill, and it alone, we are prepared to rule on the motion made to dismiss the writ of error, our decision upon which was

reserved until after the whole case was argued, because of the bewildering intricacy of the amendments, orders, exceptions, etc.; the record being a swarming hive of professional industry and fecundity. Until this record came before us, we had no adequate conception of our Brother Miller's energy; and he doubtless will never have any conception whatever of the torture which his energy has cost the writer of this opinion, whilst he, the writer, was supposed to be taking his ease in the unromantic wilds of Upper Georgia. A skeleton in one's closet is nothing to such a record in one's trunk in full view of the mountains."—Fouche *v.* Harrison, 406.

"The legal unity of husband and wife has, in Georgia, for most purposes, been dissolved, and a legal duality established. A wife is a wife, and not a husband as she was formerly. Legislative chemistry has analyzed the conjugal unit, and it is no longer treated as an element, but as a compound. A husband can make a gift to his own wife, although she lives in the house with him and attends to her household duties, as easily as he can make a present to his neighbor's wife. This puts her on an equality with other ladies, and looks like progress. Under the new order of things, when he induces her to enter into the business of keeping boarders, and promises to let her have all the proceeds, he is allowed to keep his promise if she keeps the boarders. It would seem that the law ought to tolerate him in being faithful to his word in such a matter, even though he has pledged it only to his wife, and we think it does."—McNaught *v.* Anderson, 503.

"Now there is high authority for saying that

> 'He that is robbed, not knowing what is stolen,
> Let him not know it, and he's not robbed at all.'

"This, though good dramatic law, would perhaps not hold in real life. But another less poetic proposition is both sound and applicable to business: 'He that thinks he is robbed, but having

in his purse what he thought was stolen, is not robbed at all.' "—Coleman *v.* Jenkins, 607.

"The court in Georgia has no official banker, and no bank but the receiver himself. He is its Bank of England, and the Bank of England would not be excused by depositing with John H. James were his house in London instead of Atlanta. While the fund is passing down the brooks and rivers, it may flow along the usual channels of general business, but when it reaches the ocean it must stop, unless the court orders a refluent current. There is no beyond."—Ricks *v.* Broyles, 614.

"The theory that a contract will be usurious or not according to the kind of paper-bag it is put up in, or according to the more or less ingenious phrases made use of in negotiating it, is altogether erroneous."—Pope *v.* Marshall, 640.

"I do not know the fact judicially, because as a judge I am a bachelor, but as a private individual I know that a man is no more capable of resisting his wife than he is of resisting himself. Indeed, he is rather less able to deny her suit than to defend against his own. A judgment obtained in amicable litigation by a wife against her husband is mere matter of form. To carry on such litigation is to play a sort of comedy, but we cannot permit these new parties to intervene and convert it into a tragedy. Let the wife plaintiff and the husband defendant coquet at will."—Smith *v.* Cuyler, 659.

79TH GEORGIA.

"The court cannot instruct the jury what a prudent man would do, for in legal contemplation the jury know it better than the court. If instructions on that subject had to be given, the jury would be the instructors and the court the instructed; that is, the jury would charge the judge on that part of the case, rather than receive a charge from him."—R. & D. R. Co. *v.* Howard, 53.

"The phraseology is elliptical, and doubtfully connected; there is uncertainty as to the separation of the words into sentences; whether there are two sentences where the punctuation indicates but one, seems uncertain; but we do not know of any class of persons recognized by the law as specially skilled in construing ambiguous writings. It might be, and perhaps would be a useful employment, but we do not know that anybody has taken it up as a business to ascertain the doubtful meaning of men who do not write with clearness. Obscure style is a literary defect, and we are not aware of any peculiar fitness of a maker of machinery or dealer in machinery for solving literary problems."—Hill *v.* King Manufacturing Co., 109.

"The old maxim, 'Let justice be done, though the heavens fall,' ought to be regarded by police courts and all other courts."—Hollingsworth *v.* City of Atlanta, 506.

"Now, this much would not be done for any other suitor; there is no man who could avoid a decree for such cause as she sets up; then why should this lady be indulged in so doing? We dare not decide a question of right by a rule of courtesy, or substitute deference to sex for deference to law."—Williams *v.* Simmons, 655.

80TH GEORGIA.

"Before any presumption, not manufactured by the legislature, can mount to the bench, it has to serve for a long season on the jury, and be trained for judicial administration."—Kinnebrew *v.* State, 239.

"As the earth is for the use of the family of man, with its membership by marriage and by birth constantly changing, so is the homestead for the use of the family to whose head it is set apart, no matter what changes may occur in the membership thereof, provided there be at all times one or more persons of the class recognized by law as proper beneficiaries. Exemption

or homestead may be waived or renounced, but the right to increase the family, whether by marriage or birth, is not the subject-matter of waiver. . . . . All that a man has to do after securing homestead as the head of a family, is to keep on being the head of a family without break or interval."—Nelson *v.* Commercial Bank, 329-30.

" 'Coming events cast their shadows before,' and Bull, seeing that he was soon to have a child born in lawful wedlock, commenced the act of abandonment immediately after the celebration of the nuptials. . . . . In the present case we have a domestic, not a foreign family to deal with, and the father cannot beat the law by starting in the race of abandonment before instead of after the birth of the child."—Bull *v.* State, 705.

"The question is whether the private parts of females are protected against wounding or disfiguring, or whether the protection extends to males only. . . . . It is certain that as to every specific organ or member designated by name as the subject of mayhem, both sexes are included; then why are not both included under the terms 'private parts of another?' It is true that the male has the testicles, and only upon him could the statute be violated by castration; but will that difference or any other difference in the private parts of the two sexes warrant a construction of these terms, either to the effect that the female has no private parts, or that they are less sacred than those of the male? Each sex has private parts appropriate to its own functions; this we know as a matter of fact and cannot ignore it in exploring legislative intention. It would be simple nonsense for us to hold that in contemplation of law a female has no private parts. And why should we conclude that, having them they are less protected by law against being injured, wounded or disfigured than those of the male? Whether for the sake of utility or appearance, hers are as much within the letter and spirit of the statute as his."—Kitchens *v.* State, 812.

81st Georgia.

"Upon a question of sexual intercourse the experience and sagacity of jurors might very well be trusted to run the general logic of the case; but we do not think that the terms made use of by the court in this instruction invaded these functions."—Hunt *v.* State, 142.

"The evidence indicates that the contending parties were of different colors. The case presents the race problem in a mild form, which problem, in all its forms, can be solved by the golden rule, 'Do unto others as you would that they should do unto you.'"—Shores v. Brooks, 474.

"The plaintiff spoiled the instrument, and then sued the manager because the performer did not make good music. It was the plaintiff's fault that the conductor was out of tune. . . . . While a second verdict is a sacred thing, it is less sacred than the law and the substantial justice in the case."—Peavy *v.* Georgia Railroad, 488.

"It was suggested in the brief of counsel that this minor was his own guardian. If that be true in a legal sense, and his own act as guardian would be equivalent to that of any other guardian, he should have given the liquor dealer authority in writing to furnish the forbidden beverage. Perhaps if he had taken time to prepare such a writing, he would have concluded not to make the purchase, and in this way the law and the public would have had the benefit of his deliberation. But, of course, the theory that a boy is his own guardian is a mere legal conceit or fancy."—Blair *v.* State, 629.

"Here was a single sale. At one end it required a license from the public, and at the other end it required a license from the parent or guardian. The act was carved into two parts. I analogize it in my own mind to cutting an earthworm in two; both ends would be alive. The tail was prosecuted in the first

proceeding, and now they prosecute the head, and both have been convicted. I have examined the authorities to my satisfaction, and they seem to justify this sort of proceeding."—Blair *v.* State, 631.

82ND GEORGIA.

"The bill of exceptions recites that 'counsel for plaintiff proceeded to reply to the argument in favor of the nonsuit, but was, almost at the outset, interrupted by the court, who stated that it was unnecessary for counsel for plaintiff to take up the time of the court, as the court was "dead-head" against him, and the court then passed the order.' We know it is frequently the habit of counsel to make the speech long because the case is weak, yet we agree with the circuit judge in thinking it needless to do so. . . . . That the judicial head was in the mortuary state described by its possessor was a necessary result of the evidence."—Sparks *v.* E. T. V. & G. Ry., 159.

"In this degenerate age, jurors must eat. It follows that they are to be sent when necessary to where they can get something to eat, and to the only place of that kind, when there is but one in town. It was said in the argument that the very atmosphere of the hotel was charged with influence in favor of the landlord's kinswoman and client. If the jury were hungry, most likely the table neutralized the atmosphere during the short time they were exposed to its influence."—Brinson *v.* Faircloth, 189.

"A social, genial gentleman, fond of company and a glass. by occupation a cigar-maker, who keeps his sleeping apartments with the doors 'blanketed' in a fit condition for privately gaming therein, and who invites his friends at night to refresh themselves with beer, but has in the room, besides barrel and bottles, a table suitable for gaming, together with eleven packs of cards and two boxes of chips, one containing eighty chips and the other three hundred, and a memorandum book with

names and numbers entered in it, and whose guests, or some of them, retire hurriedly under the bed on being surprised by a visit from the police at one o'clock in the morning, may or may not be guilty of the offense of keeping a gaming-house. A verdict of guilty based on these and other inculpatory facts, such as the rattle of chips and money, and some expressions about seven dollars and twelve dollars heard by the police on approaching the premises, is warranted by the evidence, and is not contrary to law."—Pacetti *v.* State, 297.

"Surely the sheriff is bound to know some law. He says he took the advice of counsel. We suppose from the quality of the advice that he must have obtained it gratis."—Treadwell *v.* Beauchamp, 738.

83RD GEORGIA.

"Employees cannot be permitted to violate the rules of the service in which they are engaged, and thereby create a cause of action in favor of themselves or their widows. Indirect suicide gives no title to *post mortem* reward."—Central Railroad *v.* Kitchens, 89.

"The argument of this case was able and admirable. It furnished a conspicuous instance of adherence to the record; which on one side was spontaneous, and on the other reluctant at first, but at last voluntary and altogether satisfactory."—Beckham *v.* Howard, 91.

"In the argument here the solicitor-general furnished no brief. He discussed the case chiefly on its merits with reference to the sufficiency of the evidence to warrant the conviction. We needed assistance on some other points in the case, but got none. . . . The other special questions embraced in the motion for a new trial we leave to be reconsidered by the court below if they should again arise; and in the meantime to be studied by the solicitor-general in the light of authority."—Giles *v.* State, 368.

"In strong contrast to the length and verbosity of the motion in arrest of judgment, which is expanded into fifteen grounds, is the brief of counsel for the plaintiff in error, which is as follows."—Travis *v.* State, 375.

"It would seem almost ludicrous to hold that a man might have himself incorporated, contract debts in his corporate capacity without investing a dollar of his own capital, transact business, and out of the proceeds pay himself a salary, instead of first paying the debts which in his corporate character he had contracted. It seems to us that no man can expect his creditors to run him as a corporation any more than as an individual."—Burns *v.* Beck, 496.

"Tested by several deliverances from this bench, the report of a trial consisting in part of dialogue between counsel and witnesses concerning the facts, and in part of extraneous matter, is not a brief of the evidence. . . . As a sample of this kind of matter, we now transcribe from the report under examination the following questions and answers: 'Q. George Washington, if he were living, with his little hatchet, could mark them, couldn't he? A. Yes, sir, I suppose so. (p. 106.) By the Court: What is the name of the creek? A. Bob O'Sheely. Q. Do you know how it is spelled? A. No, sir, I don't know as I ever saw it spelled. (p. 163.) By the Court: Did you ever eat any mulberries off that tree? A. No, sir. I never ate any mulberries off that tree in my life. (p. 171.) By Mr. Alexander: Did that tree bear mulberries? A. I think it did. Q. Pretty fair eating? A. Pretty good, I think. Q. What were they worth a quart? A. We didn't sell them by the peck, quart or gallon, either. We just ate all we got. (p. 173.)' This mulberry tree was killed by the plaintiff five years before the trial and three years before the trespass, the alleged cause of action, was committed."—Mehaffey *v.* Hambrick, 598-601.

84TH GEORGIA.

"Very probably the suggestion that there was free liquor that day in Macon county was a mere pretext; for had it been true there is no explanation of the failure to prove its truth or to make some attempt in that direction. Free liquor in one county for use in another is rare enough to require proof. Not even a county court can notice such a fact judicially as matter of public history."—Paschal *v.* State, 328.

"After the State has yielded to the Federal army it can very well afford to yield to the Federal judiciary. Our sister States, Alabama and Louisiana, have done so."—Wrought Iron Co. *v.* Johnson, 759.

85TH GEORGIA.

"We have not yet heard of any law that requires a plea to be stricken because it is not sustained by the evidence. That the learned judge who tried the case was also ignorant of it, is strong presumptive evidence to our minds that it does not exist."—Andrews *v.* Andrews, 282.

86TH GEORGIA.

"Here then is a debtor having some property, perhaps sufficient to discharge the debt. Why should it not be so applied? If any debt ought to be paid, it is one contracted for the health of souls — for pious ministrations and holy services. If any class of debtors ought to pay as matter of moral as well as legal duty, the good people of a Christian church are that class. No church can have any higher obligation resting on it than that of being just. The study of justice for more than forty years has impressed me with the supreme importance of this grand and noble virtue. Some of the virtues are in the nature of moral luxuries, but this is an absolute necessity of social life. It is the hog and hominy, the bacon and beans of morality, public and private."—Lyons *v.* Planters' Bank, 490.

"The services of Religion to the State are of untold value; but it is the glory of Religion in this country that it serves as a volunteer, without money and without price."—City of Atlanta *v.* Church, 744.

87TH GEORGIA.

"Thrice this unquiet case has materialized at the sittings of this tribunal. We hope its perturbed spirit will now enter into unbroken rest."—Phillips *v.* Atlanta, 63.

"Some cases task the anxious diligence of a court, not by their difficulty, but their simplicity. This is one of them. Because the case seemed too plain for controversy, we have had some apprehension that we might decide it incorrectly."—Wells *v.* Mayor, etc., 398.

"In the ornithology of litigation this case is a tomtit, furnished with a garb of feathers ample enough for a turkey. Measured by the verdict, its tiny body has only the bulk of twenty-five dollars, but it struts with a display of record expanded into eighty-three pages of manuscript. It seems to us that a more contracted plumage might serve for so small a bird, but perhaps we are mistaken. In every forensic season, we have a considerable flock of such cases, to be stripped and dissected for the cabinets of jurisprudence. We endeavor to pick our overfledged poultry with judicial assiduity and patience."—Lukens *v.* Ford, 542.

"Before the translation of our brother Lumpkin to this bench, though his judicial accuracy was remarkable, he shared in the fallibility which is inherent in all courts except those of last resort. In some rare instances he committed error, and the very last of his errors is now before us for correction."—Broome *v.* Davis, 586.

"There is no combination of any two average, every-day people so powerful for good or evil as that of husband and wife;

and if one spouse is angelic it seems not to cripple the combination, provided the other is intensely human."—Hadden *v.* Larned, 645.

"Some courts live by correcting the errors of others and adhering to their own. On these terms courts of final review hold their existence, or those of them which are strictly and exclusively courts of review, without any original jurisdiction, and with no direct function but to find fault or see that none can be found. With these exalted tribunals, who live only to judge the judges, the rule of *stare decisis* is not only a canon of the public good, but a law of self-preservation. At the peril of their lives they must discover error abroad and be discreetly blind to its commission at home. Were they as ready to correct themselves as others, they could no longer speak as absolute oracles of legal truth; the reason for their existence would disappear, and their destruction would speedily supervene. Nevertheless, without serious detriment to the public or peril to themselves, they can and do admit now and then, with cautious reserve, that they have made a mistake. Their rigid dogma of infallibility allows of this much relaxation in favor of truth unwittingly forsaken. Indeed, reversion to truth in some rare instances is highly necessary to their permanent well-being. Though it is a temporary degradation from the type of judicial perfection, it has to be endured to keep the type itself respectable. Minor errors, even if quite obvious, or important errors, if their existence be fairly doubtful, may be adhered to and repeated indefinitely; but the only treatment for a great and glaring error affecting the current administration of justice in all courts of original jurisdiction, is to correct it. When an error of this magnitude and which moves in so wide an orbit competes with truth in the struggle for existence, the maxim for a supreme court, supreme in the majesty of duty as well as in the majesty of power, is not *stare decisis,* but *fiat justitia, ruat coelum.*"—Ellison *v.* Georgia Railroad, 696.

88TH GEORGIA.

"The general morality of the law is higher than many good people suppose; is very much higher in the matter of guarding public sales of property against collusive combinations to suppress bidding. . . . No doubt many well-meaning persons, in their pursuit of gain, violate the law in this respect without being aware that their conduct is in the least reprehensible. They are not without conscience, but without sufficient light; the law is better than they take it to be."—Barnes *v.* Mays, 698.

89TH GEORGIA.

"In my opinion it was an error to grant a nonsuit. The engineer lost his life by mistake of the company, and his widow lost her suit by mistake of the court.—Devine *v.* S. F. & W. Ry., 541.

90TH GEORGIA.

"Good sense, good morality and good law are one and the same so long as they are not sundered violently by legislation or ignorantly by judicial error. Their unity and identity, so far as one of the questions in this case is concerned, we find still intact. There is no statute to drive, neither is there any precedent to lead decision into absurdity or injustice."—Hull *v.* Myers, 677.

"Both briefs furnished us in the case at bar are sufficiently striking to deserve mention. That of Mr. McLester is intensely classical. It opens thus: 'When the mother of Achilles plunged him in the Stygian waters, his body became invulnerable, except the heel by which she held him, and afterwards when he and Polyxena, the daughter of the King of Troy, who were lovers, met in the Temple of Apollo to solemnize their marriage, Paris, the brother of Hector, lurking behind the image of Apollo, slew Achilles by shooting him in the heel with an arrow.'

"The brief of the solicitor-general is less poetic, but equally irrelevant. It cites seven cases from the Georgia Reports, not one of which has any bearing on the question, for in each of the cited cases the attempt to kill was successful. When a homicide actually occurs from the voluntary use of a deadly weapon, an intention to kill is very much more certain than it is when the man assaulted is not killed, but only shot in the toe."—Gilbert *v.* State, 694.

91st Georgia.

"Where rape is intended, the injury contemplated can be inflicted only by actual contact of the sexual organs of the man with those of the woman. In order for an assault with intent to rape to be committed, is it necessary that the persons of the two should be in such proximity as that the organs of the male shall be within what may be termed 'striking distance' of the organs of the female? Or, is the virile member to be treated as a gun which is harmless until brought within 'carrying distance' of the target? We think not."—Jackson *v.* State, 329.

"In consequence of the wide range of investigation and the thorough course of study into which the writer was led by the exigencies of this one case, he feels prepared to produce a treatise on cumulative evidence, and yet he is quite unprepared for the minor and more moderate task of writing a judicial opinion on the subject. The exact truth is that, though he well knows what cumulative evidence is, he does not know what evidence is cumulative. He can define, but cannot distinguish. Of course, this statement is meant to be taken literally in rare instances only."—Cooper *v.* State, 366.

"The groom and bride each comes within
The circle of the other's kin;
But kin and kin are still no more
Related than they were before."

—Central Railroad *v.* Roberts, 517.

"Society demands protection, but does not thirst for vengeance. . . . In so far as human punishment is without necessity, it is without justification, no matter who may be its author or its minister."—Colbert *v.* State, 711.

92ND GEORGIA.

"Any one who seriously doubts the correctness of this ruling may readily solve his doubts by studying law."—Dutton *v.* State, 15.

"There seems to be in husbands a strong propensity, when dealing for their wives, to take part as principals in the transaction, and the record now before us furnishes evidence that these husbands had that propensity and wrought some mischief by it."—Williams *v.* Roberts, 291.

93RD GEORGIA.

"There is no less skepticism in law than in theology. This court is called upon again and again for a fresh revelation of some legal truth which has already been revealed."—Central Railroad *v.* Phinazee, 488.

95TH GEORGIA.

"It hath never happened from the earliest times to the present, that barbers, who are an ancient order of small craftsmen, serving their customers for a small fee and entertaining them the while with the small gossip of the town or village, have been held responsible for a mistake made by one customer, whereby he taketh the hat of another from the common rack or hanging-place appointed for all customers to hang their hats, this rack or place being in the same room in which customers sit to be shaved. . . . The barber is a craftsman laboring for wages, not a capitalist conducting a business of trade or trust."—Dilberto *v.* Harris, 572.

97TH GEORGIA.

"Every direct authority known to us is against us; nevertheless, we are right and these authorities are all wrong, as time and further judicial study of the subject will manifest. The mistake made by courts and judges has been that they treat the problem of preferential debts as having but one pole, the affirmative pole of benefit, ignoring the negative pole of burden altogether. . . . Courts which thus reason and decide may possibly be reached by the late discovery of Professor Roentgen, and for their benefit and the benefit of the profession generally, we shall close this opinion with appropriate illustrations, based on the new process."—Green *v.* Coast Line R. R., 36-42.

The Green case holds that a railroad is not the only "going concern" in existence; that the husband and son of the plaintiff were also "going concerns," and as such were entitled to the equal protection of the laws. This decision is the first on that side of the question, and has not met the approval of some members of the bar. I think, however, many of the profession will endorse the sentiments of a lawyer who said of this case: "When Judge Bleckley wrote that opinion his mind was luminous with equity."

The State of Georgia owes much to Judge Bleckley. He gave the best years of his life to her service, and his opinions will stand as monuments to his genius, which criticism cannot tarnish, nor the hand of time efface.

MISCELLANEOUS THOUGHTS.

JUDGES IN POLITICS.

PLEADING.

THE IRRELEVANT IN PROCEDURE.

REVISED THOUGHTS ON LAW.

JUDGES IN POLITICS.

(From *Albany Law Journal,* vol. 49, p. 409.)

Chief Justice L. E. Bleckley of Georgia, has written an interesting and significant letter to the *Atlanta Constitution* on the subject of judges taking an active part in politics. Although written with special reference to Georgia affairs, this letter contains some general truths that are equally applicable elsewhere. Chief Justice Bleckley says:

"Judicial names should not appear on the roll of militant politics—certainly not on the commissary staff. * * * It is a mistaken view, that a judge pending his term of office may lawfully liquidate his political debts. This view is too erroneous to be long adhered to and must soon be overruled and abandoned. The true theory is that every judge is politically insolvent. He has suspended political business and has no assets. His creditors must indulge him until his judicial career has terminated. Then, if he will, he may accumulate fresh capital and settle with his friends to the utmost farthing. * * * They have no cause to complain of a delay which they themselves rendered necessary by retiring him from the political arena and consigning him to the judicial cloister. To expect a judge to settle political scores while he is still a judge is hardly less incongruous than dunning a priest when he is officiating at the altar.

I have said that a judge has no assets; perhaps it would be more accurate to say that he takes a political homestead on all his assets for and during his term of office. In either case the same consequence results, for in either case he is, and ought to be, completely independent of his political creditors. It is needless to add that, being restrained from paying his debts, he has no right to make donations. In short, he should consider himself in temporary seclusion from active politics, with no political functions save to vote as he pleases like any other citizen. * * *

PLEADING.

(From 3 Ga. Bar Assocation Report (1886), p. 40.)

The Georgia Bar Association having under discussion the Report of the Committee on Delays in the Administration of Justice wherein certain changes in the system of pleading were recommended, Judge Bleckley said:

Mr. President: In studying of late, the wide subject of Truth at the Bar, I necessarily had to sweep over the field of pleading, and I undertook to get at the bottom of it. I tried to reach the real foundation stone, and I think I succeeded. But my success, or that of anybody else, will do no good in settling principle if the old ways are to be followed just because they are old; if we are to be obstructed constantly by the very worst part of the old. If we are to abide by the past, at all events, progress is utterly impossible. A man who wants the future to be an exact reproduction of the past cannot possibly progress. He is chained to the rock to which Prometheus was bound. According to my reading, the most formidable rock that has ever entered into literature, and the most formidable rock that has entered into law, is the cry, "we must avoid innovation." Innovation is movement, and the only question is whether our movement is forward or backwards. Whenever we innovate we necessarily leave the past and its conquests, and the only question is, whether we advance or retire. Nobody can change if they are constantly haunted with the foreboding that if they do change everything will be ruined. You must sacrifice the past in order to get a future different from the past. That is the law of progress. When you get a better future than the past you cut loose from the old way; you renounce the past in order to have a future superior to the past. The past must be given a fair chance. I do not turn it out of Court. It is one of the most beneficent forces that ever operated in human affairs. We must adhere to it closely enough, but not too closely. It is *prima facie* right, but when you prove it guilty, convict it, and let us set up a new

order of things. That is the general principle that ought to rule and overrule us. The past is *prima facie* right, but whenever you find out it is wrong, don't be deterred from making improvement, but be sure that your way is one that will set you forward instead of pushing you backwards. That is the principle of wise action with regard to reform. Nobody ought to leave anything unless there is light to follow, and there is no better light than principle. If you set up anything different from the past which does not rest upon principle, that is another experiment; but when you are sure the change is based upon principle, upon reason and sense, then you can make the venture.

I know there are improvements that can be made in our pleading consistently with principle. I know something can be done that will better the past.

If anybody thinks we have a system of pleading that does not call for some change, either he or I ought to get better instructed. What is the object of pleading? There is but one purpose, and that is to state the unverified case which you intend to convert into a verified case. The unverified matter (what you might call the raw material of the case), which you are going to work up and verify. Pleading is pure statement; just as much as a letter addressed to your sweetheart or your wife or your friend. The plaintiff complains that he has such a case, and he tells you what it is. The defendant says either that that is not so, or something else is so, and he makes his statement. The true rule ought to be this: the statement ought to consist precisely of what has to be verified. It ought not to fall short, or go beyond. If it goes beyond, it has surplusage matter that is unnecessary. Whatever is irrelevant, whatever is non-essential in statement, ought not to be in. Let the law declare that every man's pleadings shall embrace a full and clear statement of all matters of fact, which he is required to verify, and no other. I would not have a bill of indictment to say that on such a given day a crime was committed. I would have it to say within the last four years. The evidence don't have to show any particular date. I go upon principle. If you choose to allege a given day, I would not prohibit it by law, but I would

provide that it should not be necessary to plead with any more certainty than to prove. I would not have the law tell how to put it in, whether in paragraphs or sections; I would leave a party free to choose his own way to state his case; because when you dictate paragraphing, and so forth, in pleading, you make it mechanical somewhat.

I think the pleading ought to be free, but I think the spirit of truth ought to rule in pleading as well as in evidence, and all subsequent proceedings. A lawyer ought not to feel himself at liberty to plead an untruth; it is demoralizing. I think that is one reason we are misunderstood by the public and called liars. We take all sorts of liberties with truth, and brag and bluster and bully in our pleading. We know it don't mean much, but there are people who think it means what it says. They think his Honor on the bench absolutely sanctions and approves all this, and that the law does — and so, indeed, the law does. We allege a purely fictitious man; is not that a fool law? I do not care who Sergeant Moore, or any other sergeant had in view. Everything said in a declaration ought to present actual truth. The spirit of truth ought to rule in pleading as well as in everything else. As it is, we do not think ourselves bound by any statement we make until we come to the verification; then we get concerned about truth. We do not try to prove a lie, but we do not hesitate at all to allege one. We have got the sanction of the past for it. This venerable authority is held up by Judge Reese, though he is as good a representative of the present as I know of. I have the greatest reverence for the past; I believe in venerating what has been done by our ancestors, and would not throw away the battle they have won; but I beg to be excused whenever anybody in the past presents anything to me in pleading or evidence or otherwise, in Court, that is at variance with truth — I would stand upon truth. I do not care how hoary an error is with the frosts of the past, if it is an error it ought to be expelled, if we can expel it, and something true should be introduced in its place.

I am in favor of making our system of pleading a statement of the simple truth, and that each party shall be held responsible

for pleading the truth. I would not have anything done for mere form's sake. What a man has to verify, that and that alone I would have him plead. Declare it to be the duty of all parties to plead the truth, so far as they know it, and if they do not know it, they ought to go to work and find it out before they begin to plead, at least, with some reasonable degree of certainty.

Let the pleader sit down in his office, after getting full information about his case, and do his best to plead the truth on his side. What is the use of denying when the other party has not verified? What is the use of not guilty, or the general issue?

How to verify is the next question. We have such a thing as burden of proof. The burden of proof is on the party who does the pleading. I would not have anybody to plead anything without the burden of proof is on him. What is the use of pleading what you do not have to prove? I would measure burden of proof by the pleadings. Look and see who pleaded, and on him is the burden. How is he going to verify? You will agree that the principle upon which verification ought to be conducted is this: unverified case should be convertible into verified case as expeditiously, cheaply, and with as little trouble or labor as is consistent with justice and the ascertainment of truth. I would set off the burden of proof by the burden of admission, and the way that I would make a party carry his burden of admission would be this: I would make the parties and the counsel verify all they could, and keep the labor of verification off the jury and Court as much as possible. I would let each party demand admission, and then let the other party make the admissions or refuse to make them, and if he refuse, give his reason for so doing. You would have all that the jury has to try in the demand and refusal. I would not try a case as a whole. I would not read the declaration to the jury any further than necessary to make them understand the demand and refusal. All the time of going through a case would be saved. Let the plaintiff shape the demand as his case requires him to establish it. When you come to trial, tax each party with the cost of proving what he ought to have admitted. and measure his duty to admit by what he knew or might have known

by proper diligence. By working this system in good faith the parties can verify nearly everything before the Court comes on. They can arrive at the truth, the actual facts of the case. If there is any demand for admission made that a party had no right to make, let the adversary refuse to admit. This is very different from the present scheme, but it conforms to truth and the nature of things, and is perfectly practicable. It is new, but anything that will be an improvement upon our system will have novelty. We have tried the old way and the new way, but have never had a way based on principle, as this would be, I submit. While I prefer this, I join the committee in their report, rather than abide by the present system.

Verification is what costs; pleading don't cost much. There is no part of the case costing much but verification. When you come to verify your facts, then you have got to put up money and consume time. I would have pleading to measure verification. I would simplify it a great deal, and have no more or less pleading than the rules of law require to be verified. I would have easy, cheap and expeditious verification — that is the solution of your difficulty. The thing that gives labor to Courts and throws costs and expense upon parties, is verifying; it is converting crude matter into verified matter. You can make parties admit what they ought to admit, or make them pay for refusing.

THE IRRELEVANT IN PROCEDURE.

(From 10 Georgia Bar Association Report, p. 9.)

Discussing the question "What Reforms Are Most Needed in Remedial Procedure in Georgia?" Judge Bleckley said:

I know what is most needed, but do not know how to do it. The thing that is needed is to expel everything irrelevant from judicial proceedings and to get at the real controversy. The thing that wastes the time in trying cases is trying nothing. You are not trying anything most of the time. You are trying not to try. It is your chief effort. The thing most needed is what the special pleading was intended to effect, that is to shuffle off everything but the question in dispute. How are you going to do that? If anybody can tell it will accomplish more for legal proceedings than anything else in this world. There are generally a few matters which, if ascertained, would shorten the whole controversy. Now, if we could do this and quit marching and counter-marching, to make the plaintiff prove what nobody disputes, and relieve the defendant from proving what nobody disputes, it would be better. I know how they could get at the real controversy if they would. If two lawyers would go to a room like two honest gentlemen, and say our clients have a question between them and let us see what is the difficulty between them. If they were to do that, in fifteen or twenty minutes they can shuffle off the irrelevancy and devote themselves to what is to be tried, to the discussion of law and facts; the whole thing will be over. We will always be in mud and mire until we get honest men and parties to try to get at the business and be like gentlemen. We ought not to be employed or suffer ourselves to be employed in this way. It is wrong. We ought to be employed to find out the difference between our clients, and then go to work at the serious questions of the case and endeavor to get them solved by law and fact. That is what courts and counsel are for. They ought to be after that and nothing else. This thing of using advantages is wrong, and there will never

be any sign of hope for judicial proceedings and practice until it is expelled. That is so, and if you know how to do that, that is what you know. Now if you want to discuss that part of the symposium, why discuss it.

REVISED THOUGHTS ON LAW.

From an Address by Judge Bleckley at the Twenty-second Annual Meeting of the Georgia Bar Association.

Printed from Annual Report.

Formerly I had the common conception of law, that you meet with in nearly all books, and in nearly all professional minds, that law is the product of will; that law is the relation of one will to another, of a superior or supreme will to an inferior will. I now publicly and deliberately recant that erroneous theory of law. My conclusion at the age of 78 years is that law is not necessarily concerned with will at all; that law is not made at all; that law is declared; that it exists independently of will; that the sovereignty of the universe and the sovereignty of man is not in will, but is in wisdom. My present definition for this occasion — and I think it will serve for other occasions — is that law consists (notice my language, it is every word weighed), law consists of the essential relations between or among facts. Law is matter of relation of one fact to another fact, or one fact to several facts, or of several facts among themselves, or between them and another group of several facts; that law exists in consequence of the facts, and that it exists independently of any will; that it is not the product of a creative will, whether the creative will be the supreme Will or a subordinate will. That's my present view of law, and that is what I think Lord Coke really meant when he said that "law is the perfection of reason." That is to say, law is there wherever the facts are, and the higher reason, so far as we can know, will simply discern the true relation between or among these facts. That relation so discerned

is not by the reason of any one man, as Lord Coke says, but by the reason of many men, or of all mankind. Law, as discerned by that reason, consists of these relations, that existed before the discernment, and, in order to be declared, it is necessary that it shall be discerned, but the discernment is not concerned with the making of the relations, only in declaring and announcing them. In order for law to be presented from one mind to another mind, of course it has to be embodied in language, because that is a material thing, and there is no other way of representing it. We use language, or signs, significant signs of some sort, but this has nothing to do with the making of the law; it has to do simply with the publishing and declaring of it. I think that no Legislature can make law, and no court can make law, but the Legislature can declare it, and when the Legislature has declared it, the court must be silent. When the Legislature has not declared it, the court has the opportunity to declare it, and the court may speak. That is what I think is really done, and the gentlemen who think they are engaged in making law mistake their vocation, or mistake the process, in which they are engaged. You may say that it amounts to the same thing, but it does not, and to prove that I have only to say that a false declaration of law does not hold. People will say — and you can not keep them from saying — and think — and you can not keep them from thinking — that such and such is not law, I don't care whether it comes from the Legislature or the courts. If it don't declare the true relation between the facts, or between given facts — such of them as you consider — I say, if it does not declare the true real relation according to the perfection of reason among those facts, you will feel, as you read it, and you will say, when you talk about it, that it is not law, meaning that it is not true law, that it is a substitution or an erroneous or false assertion or declaration of law for the true assertion and declaration of it. * * * * *

Now, you will probably be agreeably surprised when I tell you that I have finished my discourse on the topic of law. I have said all I need to say. I might say a great deal more, and still keep you entertained for some little time longer, but it is

useless. You see what I mean. You see that my theory is that wherever there is a state of facts the law is in those facts, just as much as the law of motion is in mechanics or mechanical bodies. This is intrinsic law, and every state of facts has its own intrinsic law, so that the requirements of the statute in relation to conduct are simply declarations of the relations that are involved in the given facts concerned in the statute or decisions, or whatever it may be, that is to be construed and applied. I have not quite confidence enough in years and experience to exclude a possibility of my being mistaken. I still recogize the fact that I am not infallible, but, if there is any error in this view, it applies only to those particular laws that we call "special." All the general laws are embraced in it in my opinion. There may be in the special laws, though — there may be a power of making laws and prescribing what don't necessarily arise out of the relation of facts, but that part of the law which corresponds to the common law — that law which is common to us all — that law is of the nature that I have represented, even if the same meaning does not attach to these higher and more restricted and particular laws. I think it extends to the whole body, to both classes, but I do know to my own satisfaction that it comprehends all general laws, all laws that ought to be treated as applicable to everybody, to all classes of people. That much I say because this is a very important discourse that I am holding with you. It goes to the very bottom of my soul, and my experience, and my judgment, and I want to make it exactly accurate, and yet I do not want to claim more than I am entitled to. I am thus particular in presenting to you even the shades of doubt that are present to my own mind in presenting to you my explanation of the nature of law, as it appears to me.

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